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THE
LAW OF HUSBAND AND WIFE.

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A Concise View

OF

THE LAW OF

HUSBAND AND WIFE

AS MODIFIED BY THE

MARRIED WOMEN'S PROPERTY ACTS.

WITH AN

APPENDIX OF STATUTES.

BY

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PREFACE.

THE theory of the old law was that husband and wife are one person. The fundamental principle of the new law is that husband and wife are distinct persons, with independent, and possibly conflicting, rights.

I have endeavoured to state the old law—shortly, since existing standard works seem to render a fuller statement uncalled for—and to show the alterations made by the new law, with its varied application according to the date of marriage.

The Married Women's Property Act, 1882, has left much to be supplied by judicial interpretation, the burden of which for some time will rest upon the judges of the County Court. I have endeavoured to suggest solutions of some of the many doubts arising upon the construction of this Statute, which will probably be found to be more far-reaching than its authors contemplated, and more radical than a casual perusal of its provisions might suggest.

This work, which it was intended should appear with the commencement of the Act, has been delayed by pressure of other matters.

J. H. REDMAN.

2, NEW COURT, CAREY STREET,
LINCOLN'S INN.
February, 1883.

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THE

Law of Husband and Wife

AS MODIFIED BY

THE MARRIED WOMEN'S PROPERTY ACTS.

CHAPTER I.

INTRODUCTORY.

Limited application of the Act of 1882.

NOTWITHSTANDING the sweeping alterations in the law made by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), a long time must elapse before the provisions of the Act will apply uniformly to all married women, independently of the date of their marriage.

Those provisions in the Act which recognise the most fully the independent legal existence of a married woman, only apply in their integrity to women married on or after the 1st of January, 1883. As to women married before that date, their rights of property and their liabilities are governed by a number of discordant rules, partly common law, partly equitable, and partly statutory, and will vary according to the date of the woman's marriage, the date when—in the case of property—the title to it accrued, or—in the case of liabilities—the obligation was incurred.

Repeal of previous Acts not retrospective.

The two previous Married Women's Property Acts, that of 1870 (33 & 34 Vict. c. 93), and 1874 (37 & 38 Vict. c. 50), are repealed by the Act of 1882, but such repeal is not retrospective, and "shall not affect any act done, or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the repealed Acts or either of them, for or in respect of any debt, contract, wrong or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act" (45 & 46 Vict. c. 75, s. 22). In dealing, therefore, with questions affecting the property of a married woman, her rights and liabilities and the mode of enforcing them, the first point to ascertain is whether the matter is one governed by the rules of law and equity independently of the Married Women's Property Acts, or falls within one or other of those Acts. The four periods to bear in mind are (1) the period before 9th August, 1870, when the Act of 1870 came into force; (2) the period between 9th August, 1870, and 30th July, 1874, during which the Act of 1870 was in force; (3) the period between 30th July, 1874, and the 31st December, 1882, during which that Act as amended by the Act of 1874 was in force; and (4) from the 1st January, 1883, when the Act of 1882 came into force, onward.

CHAPTER II.

RIGHTS OF HUSBAND AND WIFE IN RESPECT OF WIFE'S PROPERTY.

SECT. 1.—*Property not being the Wife's separate Estate.*

By marriage husband and wife become one person;

Marriage according to the theory of English law suspends the independent legal existence of the woman. Man and wife become, and during the continuance of the coverture remain, one person, and that person is the husband.

—take only one share in a devise to a plurality of persons;

As a consequence of this unity of person of husband and wife, if a conveyance or devise be made to a husband and wife and a third person, the husband and wife take only one moiety and the third person the other moiety. (Co. Litt. 187 a; *Back* v. *Andrew*, 2 Vern. 120.)

—or in a bequest of personalty.

So in the case of a bequest of personalty to a husband and wife and other persons, the husband and wife take together only one share, notwithstanding such words as "unto and amongst J. C. and C. his wife and W. L. in equal shares and proportions." (*Re Wylde*, 2 De G. M. & G. 724; *Bricker* v. *Whatley*, 1 Vern. 233; *Gordon* v. *Whieldon*, 18 L. J., Ch. 5; 11 Beav. 170. The cases of *Paine* v. *Wagner* (12 Sim. 184) and *Warrington* v. *Warrington* (2 Hare, 54) seem prac-

tically overruled). The wife may, of course, take a separate share where the testator has sufficiently shown an intention that she should do so (see *Dias* v. *De Livera*, 49 L. J., P. C. 26; L. R., 5 App. Ca. 123). Whether this rule as to the unity of husband and wife will be applied in the case of bequests in the future, since the legislature has now recognised the distinct separate existence of the wife, remains to be seen.

Marriage vested in husband common law title to wife's property.

Upon marriage, the woman's property became subject to the same process of absorption as her legal existence. By the common law, and independently of any contract to the contrary, the whole of the real and personal property of the wife vested upon marriage in the husband, either absolutely or during the coverture.

Restrictions on wife's dispositions pending marriage treaty.

So strongly was this right of the husband favoured that the wife was not permitted after a treaty for marriage commenced to dispose of her property secretly and in fraud of her intended husband, and if she did so the disposition was liable to be set aside. (*Countess of Strathmore* v. *Bowes*, 1 Wh. & Tu. L. C. 446 *et seq.*; *Prideaux* v. *Lonsdale*, 4 Giff. 159; 1 De G. J. & S. 433.)

Separate estate.

By the rules of the old courts of equity, which are now part of the law recognized in all the courts, a married woman was permitted to have property limited to her separate use.

How separate use created.

The separate use may be created by a settlement or contract between the parties before marriage, or by the terms of the gift of some other person to the wife, or by any written instrument to which the husband is party, declar-

ing that the property shall be held for the separate use of the wife (*Pride* v. *Bubb*, 41 L. J., Ch. 105; L. R., 7 Ch. 64), or even by a verbal arrangement to that effect between husband and wife (*Haddon* v. *Fladgate*, 27 L. J., Prob. 21), and it seems also by the simple acquiescence in the wife's so treating it (*Ashworth* v. *Outram*, L. R., 5 Ch. D. 923; 46 L. J., Ch. 687; *Lumley* v. *Timms*, 21 W. R. 494). But to establish the wife's title to a separate use created by a verbal arrangement between husband and wife, or acquiescence by the husband, there must, after the death of the husband, be some corroboration of the claim of the wife that the husband had constituted himself trustee of the property for his wife. (*Whittaker* v. *Whittaker*, 51 L. J., Ch. 737.)

Words sufficient to create separate use.

In a document creating a separate estate, no particular form of words is necessary to exclude the rights of the husband. Although the appropriate words are "separate use," any words which necessarily imply that the marital control is to be excluded are sufficient, as that the property is to be at the wife's sole disposal (*Bland* v. *Dawes*, 50 L. J., Ch. 252), or that her receipt shall be a sufficient discharge. (*Stanton* v. *Hall*, 2 R. & My. 180. And see cases collected, Lewin on Trusts, 644; *Hulme* v. *Tenant*, 1 Wh. & Tu. L. C. 561.)

In respect of her separate property, a wife had practically the same power of disposition as if she were unmarried.

The tendency of modern legislation has been the development of the doctrine of separate use. This tendency has found its full development in

the 45 & 46 Vict. c. 75, by which all property of a woman married after 1st January, 1883, and all property of women whenever married, accruing after that date, are to be held and disposed of as separate property. (Sects. 2, 5.)

Wife's property not limited to her separate use.

As however in the case of women married before 1st January, 1883, there must still be a great amount of property which will not be the separate property of the wife, we shall proceed in the first place to consider the rights and powers of husband and wife in respect of property of the wife which is not limited to her separate use.

Wife's freeholds of inheritance.

The husband acquires jointly with the wife a seisin in fee in the wife's freeholds of inheritance, the husband and wife being seised in fee in right of the wife (Co. Litt. 67 a). He is entitled to the whole of the rents and profits arising therefrom during the coverture. If there is issue born of the marriage that may by possibility inherit the property as the heir of the wife, the husband is entitled if he survive his wife to an estate for his life as tenant by the curtesy (Shelford, R. P. Stats. 431; 2 Prid. Conv. 167). Such estate as the husband takes in the freehold he singly can charge or dispose of (2 Dav. Conv. 241, 4th ed.; 1 Bright, H. & W. 113). The fee simple can, however, only be disposed of by a deed acknowledged by the wife under 3 & 4 Will. 4, c. 74 (and see 45 & 46 Vict. c. 39, s. 7). Even a contract for the sale of the fee simple, though signed by the wife, will not bind her, unless acknowledged under the statute (*Castle* v. *Wilkinson*, L. R., 5 Ch. 534; 39 L. J., Ch. 843; *Nicholl* v. *Jones*, L. R., 3 Eq.

696; 36 L. J., Ch. 554; *Williams* v. *Walker*, 31 W. R. 120; Fry, 116). And the rule applies where she is a trustee for sale (*Avery* v. *Griffin*, L. R., 6 Eq. 606). The wife's interest in the proceeds of real estate directed to be sold can only be disposed of in the same way. (*Franks* v. *Bollans*, 37 L. J., Ch. 664; L. R., 3 Ch. 717.)

Chattels real.

With respect to the chattels real of the wife, the husband is entitled to the rents and profits during the joint lives. He may by act *inter vivos* dispose of them during the coverture, notwithstanding the wife's interest may be reversionary or contingent (*Donne* v. *Hart*, 2 R. & My. 360), unless the interest be of such a nature that they cannot by possibility vest in possession during the coverture (*Duberley* v. *Day*, 16 Beav. 33). It seems, however, that where the legal estate is in a trustee for the wife, the husband's disposition will be subject to her equity to a settlement. (*Hanson* v. *Keating*, 4 Hare, 1. And see below, p. 10.)

If the husband does not alien them in the wife's lifetime and he survive her, he becomes absolutely entitled to them: as to those in possession without taking out administration, and as to those not vested in possession upon taking out administration (1 Williams on Exors. 701). If the husband predecease his wife, his will does not operate upon her chattels real. (1 Roper, H. & W. 173.)

If the wife survive, then, subject to any alienation made by her husband, she is entitled to her chattels real (Co. Litt. 46 b). It does not appear to be settled whether the husband's mere contract to sell or underlease the terms of years of the wife

will bind her surviving. (2 Dart, V. & P. 1001, 5th ed.)

Chattels personal in possession.

Marriage is an absolute gift to the husband of all the personal chattels, except paraphernalia, of which the wife is at the time of marriage or afterwards becomes during the coverture possessed.

Paraphernalia.

The wife's paraphernalia—under which term are comprised such apparel and ornaments of the wife as are suitable to her condition in life—form an exception to the rule that the wife's personal chattels vest absolutely in the husband (1 Bright, H. & W. 286). The husband may dispose of them in his lifetime, and they (except the wife's necessary clothing) are liable to his debts (*Tipping* v. *Tipping*, 1 P. Wms. 730). He cannot, however, by will bequeath them away from his wife (1 Wh. & Tu. L. C. 589; 1 Williams on Exors. 763). After the husband's death, and subject to any disposition by him as aforesaid, they are the wife's. She cannot, however, during his lifetime dispose of them by gift or will. (2 Roper, H. & W. 141.)

Articles such as ordinarily constitute paraphernalia, when given to the wife either before or during marriage by a third person, and wedding presents, would be considered not as paraphernalia but as separate property. (*Graham* v. *Londonderry*, 3 Atk. 393; *Brinkman* v. *Brinkman*, *ib.*, cited; 2 Roper, 143.)

Choses in action.

Property falling under the head of choses in action were distinguished as legal choses in action, which included debts, arrears of rent, and the like, which were recoverable at law, and equitable choses in action, such as were vested in trustees and only recoverable in a Court of Equity, as legacies, resi-

duary personal estate, and money in the funds. As to choses in action, both legal and equitable, of the wife, they belong to the husband upon his reducing them into possession. If he die before his wife, and without having reduced them into possession, her choses in action will survive to her (1 Williams, Exors. 846), notwithstanding any assignment of them which may have been made by him, or even by him and his wife,—such assignment being inoperative, except made under the provisions of 20 & 21 Vict. c. 57, to be hereafter noted under the head of reversionary interests (*Ellison* v. *Elwin*, 13 Sim. 309; *Purdew* v. *Jackson*, 1 Russ. 1; *Honner* v. *Morton*, 3 Russ. 65; *Stamper* v. *Barker*, 5 Mad. 157; *Prole* v. *Soady*, L. R., 3 Ch. 220; 37 L. J., Ch. 246); and the same rule applies to arrears of the wife's income. (*Wilkinson* v. *Charlesworth*, 10 Beav. 324.)

If the wife die before they are reduced into possession her choses in action form part of her personal estate, and belong to the husband on taking out administration (1 Williams on Executors, 871). If the husband die without taking out administration to her, his personal representatives upon taking out administration to the wife will be entitled to the choses in action. (*In the goods of Harding*, L. R., 2 P. & D. 394; 41 L. J., Prob. 65; *Partington* v. *Att.-Gen.*, L. R., 4 H. L. 100; 38 L. J., Ex. 205.)

What constitutes reduction into possession.

To amount to a reduction of the wife's chose in action into possession something must be done which places the chose under the exclusive control of the husband, and changes the property therein

(*Nicholson* v. *Drury Building Estate Co.*, 47 L. J., Ch. 192; L. R., 7 Ch. D. 48; *Nash* v. *Nash*, 2 Mad. 133; 2 Wh. & Tu. L. C. 822). Thus, if the husband or any person authorized by him, either with or without his wife's concurrence, receives any money belonging to the wife, such receipt is a reduction into possession. (*Rees* v. *Keith*, 11 Sim. 388; *Hansen* v. *Miller*, 14 Sim. 22; *Dardier* v. *Chapman*, L. R., 11 Ch. D. 442; 27 W. R. 813; *Re Jenkins*, 5 Russ. 183.)

What does not constitute reduction into possession.

On the other hand a transfer of stock or shares by trustees or executors into the name of the wife (*Wildman* v. *Wildman*, 9 Ves. 174), or into the joint names of husband and wife (*Nicholson* v. *Drury Building Estate Co.*, *supra*; *Prole* v. *Soady*, L. R., 3 Ch. 220; 37 L. J., Ch. 246), or the transfer of money to the joint account of the husband and wife at a bank (*Scrutton* v. *Pattello*, L. R., 19 Eq. 369; 44 L. J., Ch. 249; *Parker* v. *Lechmere*, L. R., 12 Ch. D. 256; 41 L. T. 152), will not amount to a reduction into possession. Neither will the receipt by the husband of the interest on a chose in action reduce the principal into possession (*Ex parte Norton*, 8 De G. M. & G. 258); and receipt of part of a fund is only reduction *pro tanto*. (*Nash* v. *Nash*, 2 Mad. 133.)

Wife's equity to a settlement.

In the case of equitable choses in action, the power of the husband to acquire an absolute title thereto is subject to the equity of the wife to have a provision made thereout for herself and her children,—this right is called her equity to a settlement. (*Murray* v. *Lord Elibank*, 1 Wh. & Tudor, L. C. 464.)

Whenever a fund belonging to the wife is under the control of the Court, the wife is entitled (if otherwise unprovided for or inadequately provided for) to have a provision out of the fund. A trustee having in his hand money belonging to a married woman, though he may safely pay it to the husband is not bound to do so even though requested by the wife to do so, but may pay it into Court to allow the wife to assert her equity to a settlement. (*Re Swan*, 2 H. & M. 34; *sed contra*, *Re Roberts's Trust*, 38 L. J., Ch. 708.)

Although the settlement is always extended to the children, the equity is strictly personal to the wife; and if she die without asserting it, her children cannot insist upon a settlement (*Scriven* v. *Tapley*, 2 Eden, 337; *Pemberton* v. *Marriott*, 47 L. T. 332). Something must have been done by her to show that her equity was claimed in her lifetime, and if this appear it will enure to the benefit of the children (*De la Garde* v. *Lempriere*, 6 Beav. 344). The wife has the power to waive or release her equity to a settlement by an examination in Court, and in certain cases by an acknowledged deed under 20 & 21 Vict. c. 57. (2 Prid. Conv. 176, 11th ed.)

Reversionary interest in personalty.

Before 20 & 21 Vict. c. 57, a husband could not assign his wife's reversionary choses in action so as to bind her in the event of her surviving him, and the fact of her joining in the assignment made no difference (*ante*, p. 9). By that statute the husband and wife may by deed acknowledged dispose of every future or reversionary interest, whether vested or contingent, of the wife or of her

husband in her right in any personal estate to which she shall be entitled under any instrument made after the 31st of December, 1857 (except such interest in personal estate as may have been settled on her by any settlement or agreement for a settlement made on the occasion of her marriage), and also to release or extinguish any power which may be vested in her in regard to such personal estate, as fully and effectually as if she were a *feme sole*, and also to release and extinguish her right or equity to a settlement out of any personal estate to which she or her husband in her right may be entitled in possession under any such instrument as aforesaid. The Act does not extend to any reversionary interest to which the wife is entitled subject to a restraint upon alienation (21 & 22 Vict. c. 57, ss. 1, 2, 4). An assignment under this Act overreaches the *jus mariti*, and the assignee takes free from all claims which would attach to the husband's property. (*Re Batchelor's Estate*, 21 W. R. 901.)

Sect. 2.—*Separate Estate.*

Having considered the rights of husband and wife in respect of property not her separate estate, we need scarcely mention that all classes of property are capable of being made the separate property of the wife, but in so far as a married woman's interest in her property is not by operation of the statutes or otherwise limited to her separate use the rights of husband and wife in respect

thereof are those which we have briefly outlined in the last section.

Separate property depends on date of woman's marriage.

We shall now proceed to consider what is the separate property of a married woman. This depends to a certain extent upon the date of her marriage and the date of the acquisition of the property.

Woman married before 9th August, 1870.

In the case of a woman married before 9th of August, 1870, her separate property consists of the following:—

Property expressly limited to separate use.

1. Property settled, or granted or given to the separate use of the wife by any instrument, or becoming separate property by virtue of any agreement between husband and wife. (*Ante*, p. 4.)

Property of which husband has constituted himself her trustee.

2. Gifts by husband to wife. A husband can by declaration, or by acts which are equivalent to a declaration, constitute himself a trustee for his wife's separate use of any property either hers or his, and by doing so he divests himself of all beneficial property therein (*Ashworth* v. *Outram*, L. R., 5 Ch. D. 923; 46 L. J., Ch. 687; *Parker* v. *Lechmere*, L. R., 12 Ch. D. 256; 28 W. R. 48; *Grant* v. *Grant*, 34 Beav. 623; 13 W. R. 1057). Where the trust is not evidenced by writing, the difficulty is in proving that the husband has constituted himself her trustee. To do so there must be some proof of a clear and distinct intention on the part of the husband to constitute himself a trustee for his wife. (*M'Lean* v. *Longlands*, 5 Ves. 71; *Walter* v. *Hodge*, 2 Swanst. 92, 104; *Mews* v. *Mews*, 15 Beav. 529; *Whittaker* v. *Whittaker*, 51 L. J., Ch. 737; *Grant* v. *Grant*, *supra*.)

Wages and earnings.

3. Wages and earnings of a married woman

acquired or gained by her after the 9th of August, 1870, in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and the investments of such wages and earnings. (33 & 34 Vict. c. 93, s. 1.)

Savings bank deposits.

4. Deposits in savings banks made and government annuities granted after the 9th of August, 1870 (*ib.* s. 2), and also deposits before that date unless claimed by the husband. (26 & 27 Vict. c. 87, s. 31, and see 45 & 46 Vict. c. 75, s. 6, *infra.*)

Property in the funds, &c., in her own name.

5. Stocks and funds not being less than 20*l.*, which the woman may have had transferred to her under sect. 3 of the Act of 1870 as a married woman entitled to her separate use; and shares and stock in joint stock companies and societies registered or entered under sects. 4 or 5 of the same Act in the books of the company or society, in the name of the woman as a married woman entitled to her separate use.

Policies of insurance.

6. Policies of insurance effected under sect. 10 of the Act of 1870 for her separate use, and the like policies effected under sect. 11 of the Act of 1882.

Property the title to which accrues after 1st January, 1883.

7. All real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the 1st of January, 1883, including any wages, earnings, money, and property acquired by her in any trade carried on separately from her husband (45 & 46 Vict. c. 75, s. 5). The word "property" includes a thing in action (Sect. 24). It would seem

that this section will comprise property to which a married woman shall become entitled in *possession* after the 1st of January, 1883, notwithstanding her title in reversion may have accrued before. A title accrues to a person not only when he first acquires an interest in property, but also when he acquires a title different to that which he formerly possessed. (*Lane* v. *Oakes*, 22 W. R. 709; *Wilcox* v. *Smith*, 26 L. J., Ch. 596; 4 Drew. 40; *Archer* v. *Kelly*, 1 Dr. & Sm. 300; 8 W. R. 684.)

Property appointed by will under a general power.

8. Property subject to a married woman's general power of appointment by will becomes, by the exercise of that power, assets for payment of liabilities payable out of her separate estate. (*Godfrey* v. *Harben*, L. R., 13 Ch. D. 216; 49 L. J., Ch. 3; 45 & 46 Vict. c. 75, s. 4; Farwell on Powers, 209.)

Property *primâ facie* separate estate, consisting of—

9. Property *primâ facie* the separate property of a married woman under sects. 6, 7, and 8 of the Act of 1882. The burthen of proving that such property is not the separate property of the woman rests upon the adverse claimant. The provisions of those sections are as follows:—

(*a*) Investments, &c. standing in her sole name on 1st Jan., 1883.

"All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in

the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof." (45 & 46 Vict. c. 75, s. 6.)

A woman's balance at a banker's is a mere debt, not a deposit. (*Carr* v. *Carr*, 1 Mer. 543, n.)

"All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not." (*Ib.* s. 7.) (*b*) Investments, &c. placed in her sole name after that date.

"All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, shares, stock, debentures, (*c*) Investments at or after that date standing in her name jointly with a stranger.

debenture stock or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband." (*Ib.* s. 8.)

The investments above referred to will include not only those made by the wife herself, or by a stranger, but also those made by her husband, provided they are not made in the joint names of herself and her husband. If a husband invests money in, or makes transfers into, the joint names of himself and his wife, it is *primâ facie* a gift and advancement to her in the event of her surviving him, in the absence of evidence of contemporaneous acts showing a contrary intention (*Dummer* v. *Pitcher*, 2 M. & K. 262; *Re Gadbury*, 11 W. R. 895; *Re Eykyn's Trust*, L. R., 6 Ch. D. 115; 37 L. T. 261; 1 Roper, H. & W. 54). No presumption of an advancement, however, arises

in the case of a husband opening a banking account in the joint names of himself and wife and authorizing payment of cheques drawn thereon by either himself or his wife. (*Marshal* v. *Cruttwell*, 44 L. J., Ch. 504; L. R., 20 Eq. 328; and see *Lloyd* v. *Pughe*, 42 L. J., Ch. 282; L. R., 8 Ch. 88.)

Woman married between 9th Aug., 1870, and 1st Jan., 1883.

As to a woman married between the 9th of August, 1870, and the 1st of January, 1883, her separate property includes, in addition to those of the classes before mentioned, and subject to and without prejudice to any settlement affecting the same, the following:—

Personal property.

10. Personal property to which during coverture between the 9th of August, 1870, and the 1st of January, 1883, she has become entitled either in possession or reversion (*Lane* v. *Oakes*, 22 W. R. 709) as next of kin of an intestate, whatever the nature or value of such property (*King* v. *Voss*, L. R., 13 Ch. D. 504; 28 W. R. 565), and any sum of money not exceeding 200*l.* under any deed or will. (33 & 34 Vict. c. 93, s. 7.)

Real estate.

11. The rents and profits of any freehold, copyhold, or customaryhold land descending upon her during the period aforesaid as the heiress or coheiress of an intestate (*Ib.* s. 8). The gift of the rents and profits to her separate use seems also to give her the land itself to her separate use (see *King* v. *Voss*, *supra*). It has been suggested that this is restricted to property devolving during coverture. (1 Dart, V. & P. 12.)

Woman married after 1st Jan., 1883.

In the case of a woman married after the 1st of January, 1883, it is provided that she "shall be

entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill" (45 & 46 Vict. c. 75, s. 2). Property includes things in action. (Sect. 24.)

Statutory separate property is made such without prejudice to settlements.

Property which by the Act of 1882 is declared to be the separate property of a married woman is subject to a provision that "nothing in the Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman." (*Ib.* s. 19.)

Savings from separate estate.

Savings from the income of separate estate (*Molony* v. *Kennedy*, 10 Sim. 254), and the investments thereof, whether in real estate (*Darkin* v. *Darkin*, 23 L. J., Ch. 890; 17 Beav. 578) or in chattels, have the same incidents as the property from which they arose. Formerly income actually received by a woman during her widowhood lost its character of separate property. (*Spicer* v. *Dawson*, 26 L. J., Ch. 704; 24 Beav. 365.)

Savings out of housekeeping allowance.

It seems very doubtful whether when a husband and wife are living together the savings of the wife out of the allowance made to her for housekeeping can be considered as her separate estate (2 Bright, H. & W. 302; *Messenger* v. *Clark*,

19 L. J., Ex. 306; 5 Ex. 388). But where a husband in India remitted money to his wife for her separate maintenance, it was held that she was entitled to the savings as her separate property (*Brooke* v. *Brooke*, 27 L. J., Ch. 639; 25 Beav. 342). So in the case of a woman's savings out of alimony. (*Moore* v. *Barber*, 5 Giff. 43.)

Separate property of wife in case of desertion or judicial separation.

Previously to the passing of the Married Women's Property Acts married women had a statutory separate estate under certain circumstances. A wife deserted by her husband and having obtained a protection order, is entitled as a *feme sole* to her earnings and property acquired since the desertion (20 & 21 Vict. c. 85, s. 21, and 21 & 22 Vict. c. 108, s. 8). So in the case of a judicial separation the wife is from the date of the sentence, and whilst the separation continues, to be considered as a *feme sole* with respect to property of every description which may come to or devolve upon her (20 & 21 Vict. c. 85, s. 25). In either of those cases the wife is entitled absolutely, not only to property given to her afterwards (*Re Kingsley*, 26 Beav. 85), but also to property which was reversionary or not reduced into possession before the separation or protection order, and which falls into possession afterwards. (*Re Insole*, L. R., 1 Eq. 470; *Re Coward & Adams' Purchase*, L. R., 20 Eq. 179; 44 L. J., Ch. 384; *Nicholson* v. *Drury Building Estate Co.*, L. R., 7 Ch. D. 48; 47 L. J., Ch. 192.)

How separate property

Formerly to secure the separate use to a married woman the property was required to be vested in a

may be held.

trustee, and if no express trustee was appointed the husband was treated as a constructive trustee for his wife. (*Bennet* v. *Davis*, 2 P. Wms. 316; *Rich* v. *Cockell*, 9 Ves. 369.)

Trustee not necessary.

This rule no longer obtains; as from the 1st of January, 1883, a married woman shall, in accordance with the provisions of this Act, be capable of acquiring and holding any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee. (45 & 46 Vict. c. 75, s. 1, sub-s. 1.)

Wife's power of alienation over her separate property.

In respect of property limited to her separate use (*Fettiplace* v. *Gorges*, 3 Bro. C. C. 8), whether in possession or reversion (*Sturgis* v. *Corp*, 13 Ves. 190), a married woman (in the absence of a restraint on anticipation imposed by the instrument limiting the separate use) has, as an incident of her interest, notwithstanding her marriage and independently of the consent or concurrence of her husband, the same power of dealing with it as if she were unmarried (*Rich* v. *Cockell*, 9 Ves. 369; *Pride* v. *Bubb*, L. R., 7 Ch. 64). And even her freeholds of inheritance settled to her separate use she can convey and pass the fee simple, either by her will (*Hall* v. *Waterhouse*, 5 Giff. 64; *Pride* v. *Bubb*, *supra*) or by a deed unacknowledged (*Taylor* v. *Meads*, 34 L. J., Ch. 203; 4 De G. J. & S. 597). This right of disposition, it has been considered (2 Dav. Conv. 196, 241; 2 Dart, V. & P. 571; 1 Prid. Conv. 184, 11th ed.), does not extend to the legal estate, and that where real property is limited to the separate use of a married woman, without the interposition of a trustee other

Freeholds of inheritance.

Whether she can pass the legal estate if vested in her without acknowledged deed.

than her husband, an acknowledged deed is necessary to pass the legal estate. The contrary has, however, been decided in Ireland (*Adams* v. *Gamble*, 12 Ir. Ch. Rep. 102; and see Lewin, 638, 6th ed.); and the observations of the Master of the Rolls in *Cooper* v. *Macdonald* (47 L. J., Ch. 373; L. R., 7 Ch. D. 288), and of Lord Hatherley in *Pride* v. *Bubb* (L. R., 7 Ch. 64; 41 L. J., Ch. 105), are in favour of that decision, though each of the latter cases was dealing with the equitable estate only. In *Cooper* v. *Macdonald* (*supra*) the point for decision was the effect of a disposition by a married woman of the separate estate in defeating her husband's right to curtesy thereout. The terms of the judgment have, however, an application beyond the actual point in controversy. Jessel, M. R., said, "A gift of a fee simple estate or a gift of a capital sum of money to the separate use of a married woman gives her the same power of alienation over it as if she were a single woman, and that at once gets rid of any notion of the husband having an interest. Whatever interest he would have had in the absence of the disposition is got rid of by the disposition. The separate use is a creature of equity, and equity says the estate may be so limited to a married woman that she can get rid of every possible interest of the husband. That is the meaning of a limitation to her separate use. It is exactly the same for this purpose as if the estate had been limited to such uses as she should by deed or will appoint. It entirely destroys the notion of the husband having any interest in it as against her disposition."

Whether power of alienation over legal fee extended by recent Act.

This question of what a woman's powers of alienation over the legal estate were is of considerable importance, for they do not seem to be extended by the Act of 1882, which provides that a married woman shall "be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee" (45 & 46 Vict. c. 75, s. 1, sub-s. 1). Unless some extraordinary effect therefore results from the use of the words "without the intervention of any trustee," this merely declares the law in the terms used by the judges in the two cases (*Cooper* v. *Macdonald* and *Pride* v. *Bubb*) above adverted to.

Legal estate outstanding in a trustee.

Where the legal estate is expressly vested in a trustee he must of course concur in any alienation in order to pass the legal estate. The recent Act makes no difference in this respect.

Appointment by married woman under a power.

Where real estate is limited to such uses as a woman shall appoint she can without her husband's concurrence and without a deed acknowledged vest both the legal and equitable interests in the property in another by the exercise of the power of appointment (*Doe* d. *Bloomfield* v. *Eyre*, 18 L. J., C. P. 284; 5 C. B. 713; 3 & 4 Will. IV. c. 74, s. 78; Farwell on Powers, 91). A married woman may also exercise a power over personalty whether in possession or reversion. If the latter, it need not be by deed acknowledged under 20 & 21 Vict. c. 57. (*Ante*, p. 11.)

Transfers by married woman of

We have seen (*ante*, p. 15) that the Act of 1882 has given to a married woman a *primâ facie* title

securities held by her solely or jointly with a stranger.

to investments made, or to be made, in her name solely or jointly with a stranger, in deposits in banks, annuities, stocks, funds, shares, &c. The Act also provides that "It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband." (45 & 46 Vict. c. 75, s. 9.)

Power of attorney of married woman.

A married woman, whether an infant or not, shall have power, as if she were unmarried and of full age, by deed to appoint an attorney on her behalf for the purpose of executing any deed, or doing any other act which she might herself execute or do (44 & 45 Vict. c. 41, s. 40). Before this Act was passed, a married woman was incapable of executing a power of attorney (2 Roper, H. & W. 67; *Kenrick* v. *Wood*, 39 L. J., Ch. 92; L. R., 9 Eq. 333; *Graham* v. *Jackson*, 14 L. J., Q. B. 129). She can now only appoint an attorney to do that which she herself could do. Where a woman is required to convey by a deed acknowledged, she cannot appoint her attorney to do so. It is assumed she could not, by a power of attorney, authorize the receipt of income of separate property

in respect of which she is restrained from anticipation. (See *Stanley* v. *Stanley*, L. R., 7 Ch. D. 589; 47 L. J., Ch. 256.)

Upon what property a married woman's will operates.

Before the Wills Act (1 Vict. c. 26), a married woman was, as a general rule, incapable of making a will. To this there were exceptions enabling her to make a will with respect to personal property settled to her separate use, or the savings therefrom, or property over which she had a power of appointment, or where the will was made with the consent of her husband, or where she was an executrix, and made a will appointing an executor for the purpose of continuing the representation to the original testator (*Noble* v. *Willock*, L. R., 7 H. L. 580; 44 L. J., Ch. 345; Sugden, R. P. Stats. 307; Theobald on Wills, 15). The statute 1 Vict. c. 26, made no alteration in the testamentary capacity of a married woman, for by sect. 8 it provided that "No will made by a married woman should be valid, except such a will as might have been made by a married woman before the passing of the Act." But though it gave her no enlarged capacity to make a will, yet her will, so far as she had the capacity to make one, has the benefit of the rules of interpretation laid down by the statute (*Thomas* v. *Jones*, 32 L. J., Ch. 139; 1 De G. J. & S. 63; approved, *Noble* v. *Willock*, *supra*; *Bernard* v. *Minshull*, 28 L. J., Ch. 649; John. 276; *Bishop* v. *Wall*, 45 L. J., Ch. 773; L. R., 3 Ch. D. 194), including sect. 24, which makes the will speak as to the real and personal property comprised in it as if executed immediately before the testator's death; and sect. 27, which makes a general devise

or bequest operate as an exercise of a general power of appointment.

The will of a married woman, therefore, will operate upon separate property acquired by her, and general powers of appointment devolving upon her, after the date of its execution.

The testamentary capacity of a married woman established by these authorities, relieves us from the necessity of extracting any further testamentary capacity from the not very lucid terms of sect. 1, sub-sect. 1, of the Act of 1882.

The appointment of an executor of her will by a married woman entitles it to probate, though it otherwise deals only with real estate. (*Brownrigg* v. *Pike*, L. R., 7 P. D. 61; 51 L. J., P. D. 29).

Powers of married woman tenant for life under Settled Land Act, 1882.

In addition to the power of alienation possessed by a married woman over real estate, of which she is entitled to the fee simple, she has certain statutory powers in respect of land, of which she is only tenant for life. The Settled Land Act, 1882 (45 & 46 Vict. c. 38), confers upon tenants for life authority to sell, enfranchise, exchange, lease and exercise other powers over settled land in which they are interested, and provides by section 61, sub-sections 2—6, as follows:—

"Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her

husband, shall have the powers of a tenant for life under this Act." (Sub-s. 2.)

"Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act." (Sub-s. 3.)

"The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised." (Sub-s. 4.)

"The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section." (Sub-s. 5.)

"A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act." (Sub-s. 6.)

Restraint upon anticipation of income.

Although a prohibition against alienation or anticipation is void against a man or a woman while unmarried, a married woman's dominion over property settled to her separate use may be restrained—she may be restrained from anticipating the rents and profits of real estate and the income of personalty given to her separate use (*Jackson* v. *Hobhouse*, 2 Mer. 487), but not of property which is not for her separate use.

By what words created.

This restraint is generally created by the words "without power of anticipation," but no particular form of words is necessary. Thus if property is

given to a woman not to be sold or mortgaged (*Steedman* v. *Poole*, 6 Hare, 193), or if the payment is to be made on the receipts of the lady alone, or of some person authorized by her to receive payment after such payment shall have become due (*Baker* v. *Bradley*, 7 De G. M. & G. 597), or if the income is to be free from her debts or engagements (*White* v. *Herrick*, 21 W. R. 454), or the like, it is sufficient to create the restraint. But a direction to pay into the lady's own proper hands and upon her receipt alone will not be sufficient. (*Acton* v. *White*, 1 S. & S. 429; *Re Ross's Trust*, 1 Sim., N. S. 196.)

Effect upon the right of disposition.

When real estate is given to a married woman's separate use with a restraint on anticipation, she is unable to dispose of it during the coverture except by will (*Baggett* v. *Meux*, 1 Ph. 627). The same rule applies to personalty consisting of an income-producing fund (*Re Ellis's Trust*, L. R., 17 Eq. 409; *Smith* v. *Smith*, L. R., 19 Ch. D. 277; 45 L. T. 786; *Re Clarke's Trusts*, 51 L. J., Ch. 855; 47 L. T. 43; 30 W. R 778). Where there is an absolute gift to a married woman of a fund not producing income, the restraint on anticipation has no operation. (*Re Croughton's Trust*, L. R., 8 Ch. D. 460; *Arnold Kayess*, 51 L. J., Ch. 721.)

A restraint upon anticipation does not prevent a married woman enlarging an estate tail into an estate in fee simple (*Cooper* v. *Macdonald*, L. R., 7 Ch. D. 289), or exercising the powers given by the Settled Land Act, 1882. (*Ante*, p. 28.)

Restraint determines

A restraint upon anticipation, like the separate

with coverture.

estate, only has existence during coverture, and property with a restraint on anticipation may be disposed of by her at any time while she is discovert (*Tullett* v. *Armstrong*, 1 Beav. 1; 4 My. & Cr. 377; *Jones* v. *Salter*, 2 R. & M. 208; *Woodmeston* v. *Walker*, 2 R. & M. 197), or living apart from her husband under a judicial separation (*Munt* v. *Glynes*, 41 L. J., Ch. 639) or under a protection order. (*Cooke* v. *Fuller*, 26 Beav. 99.)

Revives on future coverture.

If the wife whilst discovert makes no disposition of the property the clause in restraint of anticipation revives on a future coverture (*Tullett* v. *Armstrong, supra*; *Re Gaffee*, 1 Mac. & G. 541; *Shafto* v. *Butler*, 40 L. J., Ch. 308), unless the restraint is confined to a particular coverture. (*Moore* v. *Morris*, 4 Drew. 33; *Knight* v. *Knight*, 6 Sim. 121; *Hawkes* v. *Hubback*, L. R., 11 Eq. 5; 40 L. J., Ch. 49.)

How far Court can dispense with the restraint.

Formerly the Court had no power to release property from the restraint on anticipation, even where manifestly for the benefit of the woman that it should be so. (*Robinson* v. *Wheelwright*, 6 De G. M. & G. 535.)

In case of ante-nuptial debts.

However, in respect of ante-nuptial debts to which a married woman's separate estate was made liable by the Married Women's Property Act, 1870, s. 12, it has been held that they could be enforced against such separate estate notwithstanding the restraint on anticipation. (*Sanger* v. *Sanger*, L. R., 11 Eq. 470; 40 L. J., Ch. 372; *London and Provincial Bank* v. *Bogle*, L. R., 7 Ch. D. 773; 47 L. J., Ch. 301.)

Under 44 & 45

By sect. 39 of the Conveyancing and Law of

Property Act, 1881, it is provided that notwithstanding a married woman is restrained from anticipation the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order with her consent bind her interest. (*Hodges* v. *Hodges*, L. R., 20 Ch. D. 749; 51 L. J., Ch. 549; *Tamplin* v. *Miller*, 30 W. R. 422; and see Hood & Challis's Conv. Acts, 144.) Vict. c. 41, s. 39.

The Married Women's Property Act, 1882, provides that "Nothing in this Act contained shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors." (Sect. 19.) This somewhat narrows the law of *Sanger* v. *Sanger*, &c. (*supra*, p. 30), and limits the power of the Court to override the restraint on anticipation to the woman's own property included in a settlement. Under M. W. P. Act, 1882.

SECT. 3.—*Devolution of Undisposed-of Separate Estate.*

Devolution independently of 45 & 46 Vict. c. 75.

Independently of the provisions of the Married Women's Property Act, 1882, the devolution of a married woman's separate estate which she does not dispose of by act *inter vivos* or by will is the same as that of property not being her separate property. (*Ante*, s. 1.)

Freeholds of inheritance.

In the quality of estates equity follows the law, and therefore a woman's freeholds of inheritance settled to her separate use, even where the legal estate is in a separate trustee, become liable to her husband's right of curtesy if there has been issue born alive of the marriage (*Morgan* v. *Morgan*, 5 Madd. 408; *Follett* v. *Tyrer*, 14 Sim. 125; *Cooper* v. *Macdonald*, L. R., 7 Ch. 288; 47 L. J., Ch. 373), and if in the case of copyholds there is a custom for curtesy. Subject to the husband's curtesy the estate devolves upon her heir-at-law.

Investments in realty.

Her savings invested in realty have the incidents of realty, and are subject to the same rule of devolution. (*Steward* v. *Blakeway*, L. R., 4 Ch. 603.)

Apportioned share of rents.

The apportioned share of rents of realty which accrued during her lifetime from her separate estate, would be part of her personal estate. (*Browrigg* v. *Pike*, L. R., 7 P. D. 61; 51 L. J., P. D. 29; *Capron* v. *Capron*, L. R., 17 Eq. 288; 43 L. J., Ch. 677; the statute 32 Hen. VIII. c. 37, s. 3, does not apply to separate estate.)

Separate use in chattels

As to chattels, it has been said that a reservation thereof to the sole and separate use of a married

woman is to give her dominion over them during her life, and has no reference to the devolution of the property after her death (*Proudley* v. *Fielder*, 2 My. & K. 57), and that the quality of separate estate ceases at her death. (*Molony* v. *Kennedy*, 10 Sim. 254.)

does not affect devolution.

Therefore her chattels in possession, including her chattels real (Macq. H. & W. 320), belong to her husband in his marital right, and without the necessity of taking out letters of administration. (*Molony* v. *Kennedy*, *supra*; *Bird* v. *Pegrum*, 22 L. J., C. P. 166; 13 C. B. 639; *Johnstone* v. *Lumb*, 15 Sim. 308.)

Chattels in possession.

As to a married woman's separate estate in action which is not disposed of it belongs to her administrator. (*Proudley* v. *Fielder*, *supra*.)

Chattels in action belong to administrator.

The right to have a grant of administration of a married woman's effects belongs exclusively to the husband (Co. Litt. 351 a; 1 Williams on Exors. 409, 7th ed.); and the property which he takes as administrator belongs to him absolutely, to the exclusion of her next of kin (2 *ib.* 1488). That was the right of an administrator before the passing of the Statute of Distributions, and doubts having arisen whether the right of a husband was not superseded by that statute, it was enacted by 29 Car. II. c. 3, s. 25, that neither the Statute of Distributions nor anything therein contained "shall be construed to extend to the estates of *feme coverts* that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and personal estates, and recover

Husband's right to be administrator.

and enjoy the same as they might have done before the making of the said Act."

When a woman's will makes only a partial disposition of her separate estate, general administration of her estate is granted to her husband, and probate of the will limited to the estate thereby disposed of to the executors of the will. (*Askew* v. *Rooth*, L. R., 17 Eq. 426; 22 W. R. 524.)

A husband has, however, no right to administration where the marriage has been dissolved (*In the goods of Hay*, 35 L. J., Prob. 3; L. R., 1 P. & M. 51); nor a right to administration in respect of her separate estate, where she has obtained a protection order, under which she has been living apart from him. (*In the goods of Stephenson*, 36 L. J., Prob. 20; L. R., 1 P. & M. 287.)

Separate estate devolves, subject to liabilities.

Property belonging to a married woman devolves subject to the liabilities which she has created in respect thereof.

The estate of a married woman is administered according to the ordinary rules. (*Owens* v. *Dickenson*, Cr. & Ph. 48; *Thompson* v. *Bennett*, L. R., 6 Ch. D. 739; 46 L. J., Ch. 803.)

Whether liable for woman's funeral expenses.

In *Gregory* v. *Lockyer* (6 Madd. 90), the decree directed a married woman's separate estate to be applied in payment of her debts and funeral expenses, though a doubt was expressed whether generally the husband's liability in this respect will be thrown upon the wife's estate (and see *Bertie* v. *Chesterfield*, 9 Mod. 31). Sometimes, by the terms of her will, a woman's separate property becomes charged with her funeral expenses (*Willeter* v. *Dobie*, 2 K. & J. 647). A third person

who, in the absence of the husband, voluntarily pays the expenses of the wife's funeral, can recover from the husband. (*Bradshaw* v. *Beard*, 31 L. J., C. P. 273; *Jenkins* v. *Tucker*, 1 H. Bl. 90.)

Rules of devolution —how affected by M. W. P. Act, 1882.

What alteration is made in the rules as to the devolution of undisposed-of separate estate by the 23rd section of the Married Women's Property Act, 1882, can, until the point has received judicial interpretation, be only matter of speculation. That ill-expressed section is as follows:—

45 & 46 Vict. c. 75, s. 23.

"For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities [*as she would have*] and be subject to the same jurisdiction as she would be [*subject to*] if she were living" (45 & 46 Vict. c. 75, s. 23). The words supplied in italics seem necessary to complete the meaning; but what the meaning is, is not very clear. Literally, it might seem that "the *same* rights" would include her rights of property and rights of alienation, and that the marital right of the husband, and the right of succession of the heir-at-law to realty, would be displaced entirely by that of the personal representative. But by an equally literal construction, the "liabilities" would include "the *same* liability" to criminal proceedings as the wife under sect. 16. So that where the husband is the personal representative of the wife, he might be both prosecutor and prisoner.

Probably neither of the results above indicated would be held to follow from the section; but looking to the loose and disconnected manner in

which the various provisions of the Act are thrown together, it is suggested as the reasonable solution that the proper position of this section is immediately following sect. 1, sub-s. 2, and that the section is merely to enable actions, or rights of action, by or against a married woman to be continued or enforced by or against her legal personal representative in the same way as if she were a man or unmarried (See R. S. C., Order L.). In this way sect. 24 is separated from sect. 18, to which it is supplementary; and so a woman's rights of action are dealt with partially in sect. 1, sub-s. 2, and taken up again in sect. 12, and the subject of criminal proceedings, referred to in the latter section, is resumed in sect. 16.

CHAPTER III.

RIGHTS AND LIABILITIES OF HUSBAND AND WIFE IN RESPECT OF PROPERTY POSSESSED BY WIFE AS EXECUTRIX, ADMINISTRATRIX, OR TRUSTEE.

HAVING considered the position of husband and wife with respect to the latter's beneficial property, we shall now proceed to consider their position with regard to property belonging to her in *autre droit*.

Marriage no gift of wife's chattels in *autre droit*.

We have seen (*ante*, p. 8) that at common law marriage operates as an absolute gift to the husband of all the goods and chattels of which the wife is beneficially possessed at the time of marriage, or becomes so possessed during the coverture. It does not, however, operate as such gift to him of chattels belonging to the wife in *autre droit* as executrix, administratrix, or trustee. (*Thompson* v. *Pinchell*, 11 Mod. 178.)

But gives him power of disposition over the property.

The husband, however, became liable for his wife's misapplication of the estate during the coverture, and although he takes no interest in the property as a compensation for that liability, the law gave him, for his own protection, the exclusive power of disposition over property so held.

The husband of an executrix is a trustee within the Trustee Act, 1850. (13 & 14 Vict. c. 60; *Ex parte Bradshaw*, 2 De G., M. & G. 900; *Re Wood*, 3 De G., F. & J. 125; 30 L. J., Ch. 453.)

The husband is entitled to surrender or dispose of terms of years vested in his wife as executrix or administratrix (*Thrustout* v. *Coppin*, 2 W. Bl. 801; *Arnold* v. *Bidgood*, Cro. Jac. 318). So he may release or give good discharges for debts owing to her in that capacity. (1 Roper, H. & W. 188.)

On the other hand, payments made to or releases or discharges given by a wife as executrix or administratrix without the consent of her husband are invalid. (2 Williams on Exors. 963; but see *Pemberton* v. *Chapman*, 27 L. J., Q. B. 429; E. B. & E. 1056.)

Wife may dispose of such property by will.

The wife is able, however, without the concurrence of her husband, to make a will of property, not reduced into possession and belonging to her as a personal representative, and appoint an executor for the purpose of continuing the representation to the original testator (*Scammell* v. *Wilkinson*, 2 East, 552; *In the goods of Richards*, 35 L. J., Prob. 44; L. R., 1 P. & M. 156). With respect to the assets which have been received by the *feme* executrix during the marriage and not disposed of at her death, they immediately become the husband's property, and are not affected by the will (*Hodsden* v. *Lloyd*, 2 Bro. C. C. 543; 1 Williams on Exors. 53, 922), but are held by him in trust for the persons entitled. (*Adair* v. *Shaw*, 1 Sch. & Lef. 262.)

Executorship, &c. enuring to wife after marriage.

After marriage the wife was at common law unable to take upon herself the office of executrix or administrator without the consent of her husband (1 Williams on Exors. 232, 450; but see *Clerke* v. *Clerke*, 50 L. J., Prob. 69; L. R., 6

P. D. 103). When she did take upon herself the office, the powers of husband and wife in respect of the estate became the same as if she had taken upon herself the office before marriage.

Woman separated from husband.

A married woman who has obtained a separation or protection order is entitled to deal with property coming to her in *autre droit* after the separation or desertion, without the concurrence of her husband. (*Bathe* v. *Bank of England*, 27 L. J., Ch. 630; 4 K. & J. 564.)

Married woman trustee.

The position of a married woman trustee is the same as that of an executrix. The legal control over the chattels passes to the husband, and he becomes a trustee thereof. (*Clifford* v. *Washington*, 48 L. J., Ch. 205; *Adair* v. *Shaw*, 1 Sch. & Lef. 262; Lewin, 32.)

Alteration by 45 & 46 Vict. c. 75.

The Married Women's Property Act, 1882, has made some alteration in the position of a married woman in reference to executorships and trusteeships, and which will take effect from the 1st of January, 1883.

Wife may accept office of executor, &c. without consent of husband.

By sect. 1, sub-s. 2, a married woman shall be capable of entering into any contract in all respects as if she were a *feme sole*. By sect. 24 it is provided that the word contract "shall include the acceptance of any trust or of the office of executrix or administratrix." It seems, therefore, that after the above date a married woman may take out probate or administration without the concurrence of her husband being required.

Power of alienation over chattels.

The restraint upon a married woman's power of alienation over chattels vested in her in *autre droit* has also been very much narrowed. Sect. 18

provides that "A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband as if she were a *feme sole*."

The husband's concurrence in the disposition of chattels vested in his wife in *autre droit* does not seem to be absolutely dispensed with by this section. "Any such annuity or deposit as aforesaid," &c., seems to limit the application of the section to chattels of the descriptions referred to in sections 6, 7 and 8, *ante*, p. 15.) Beyond the classes of property specifically mentioned in those sections a married woman, as to property vested in her in a representative capacity, would seem to have no further power of dealing with personal estate than she had before the passing of the Act. The concurrence of her husband would still seem necessary for the transfer of leasehold interests, mortgage debts, and the like.

Trust legal estate passed by deed acknowledged.

A married woman could until recently only pass the legal estate in freeholds of inheritance vested in her as a trustee, or one of several trustees, by a deed acknowledged, in which the husband con-

curred. (*Avery* v. *Griffin*, L. R., 6 Eq. 606; Fry, S. P. 117.)

Except woman a "bare trustee."

By the V. and P. Act, 1874, it was enacted that "when any freehold or copyhold hereditaments shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*" (37 & 38 Vict. c. 78, s. 6). What is a bare trustee is by no means settled law. Hall, V.-C., accepted as a proper definition, "one to whose office no duties were originally attached, or who, although duties were originally attached to his office, would on the requisition of his *cestuis que trust* be compellable in equity to convey the estate to them or by their direction. (*Christie* v. *Ovington*, L. R., 1 Ch. D. 279; 24 W. R. 204.) Jessel, M. R., in *Morgan* v. *Swansea Urban Sanitary Authority* (L. R., 9 Ch. D. 582; 27 W. R. 282), declined to accept this definition, but did not give a substituted one.

Acknowledged deed still necessary to pass freehold.

The M. W. P. Act, 1882, does not affect the disability of a married woman to deal with freeholds vested in her as a trustee, unless the Courts should strain the words "all real and personal property" in sects. 2 and 5 to include trust estates, in respect of which a married woman "may hold and dispose of as her separate property." Such a construction would be contrary to the usual rule applicable to the construction of documents limiting property to the separate use of a married woman. Such a limitation *primâ facie* implies a beneficial enjoyment by her, and does not include trust property (see *Lindsell* v. *Thacker*, 10 L. J., Ch. 348; *S. C.*, 12 Sim. 178, where the

marginal note is exactly the reverse of the decision; *Lewis* v. *Mathews*, 35 L. J., Ch. 638; L. R., 2 Eq. 177; *Howard* v. *Bank of England*, L. R., 19 Eq. 295; 44 L. J., Ch. 329). Moreover, such a construction would make a married woman's trust property liable to her ordinary contracts under sect. 1, sub-sect. 3. It seems, therefore, that an acknowledged deed will still be necessary in those cases in which it was necessary before the Act.

It remains to consider what will be the liability of the husband and wife for the devastavits or breaches of trust of the wife, first pointing out the rule in respect of matters happening before 1st of January, 1883, and the alteration after that date made by the Act of 1882.

Devastavit.

If an executor or administrator wastes or misapplies the assets of the deceased, either by actual mismanagement or negligence, this is called a devastavit. (2 Williams on Exors. 1796 *et seq.*)

Committed before marriage.

In the case of a woman who is an executrix or administratrix, if she commits a devastavit and then marries, her husband (independently of the Act of 1882) is liable, whether or not he receives a portion with her, as long as the coverture lasts. Upon her death his liability as husband ceases. (*Adair* v. *Shaw*, 1 Sch. & Lef. 263.) If he take out administration to her he will be liable in that capacity. (*Ib.*)

If the wife survive the husband, her liability revives.

Committed during marriage.

As to a devastavit committed by the wife during coverture, the husband would be liable during coverture and afterwards to the extent of what-

ever assets came into the possession of the wife or husband during the coverture. (*Adair* v. *Shaw*, 1 Sch. & Lef. 261; *Clough* v. *Bond*, 3 My. & Cr. 490; *Smith* v. *Smith*, 21 Beav. 385.)

The wife, also, if she survive her husband remains liable for a devastavit committed during coverture. (*Adair* v. *Shaw*, *supra*; *Soady* v. *Turnbull*, L. R., 1 Ch. 494; 35 L. J., Ch. 784; 2 Williams on Exors. 1840.)

Husband's liability for breaches of trust.

In the same way and upon the same grounds, namely, that upon her marriage the legal control over a woman's property passes to her husband, a husband is liable to make good breaches of trust committed by her before (*Palmer* v. *Wakefield*, 3 Beav. 227), or during the coverture. (*Clifford* v. *Washington*, 48 L. J., Ch. 205.)

Non-liability of separate estate before Act of 1882.

Before the M. W. P. Act, 1882, the separate estate of a married woman was not liable during the coverture for her breaches of trust or devastavit, unless the breaches of trust or devastavit consisted in the wasting of the funds comprised in the same instrument as that creating her separate estate (*Waynford* v. *Heyl*, 44 L. J., Ch. 567; L. R., 20 Eq. 321; *Clive* v. *Carew*, 28 L. J., Ch. 685; *Pemberton* v. *McGill*, 1 Dr. & Sm. 266), and not even then if there was a restraint on anticipation. (*Arnold* v. *Woodhams*, L. R., 16 Eq. 29; 42 L. J., Ch. 578.)

Liability under the Act of 1882.

The Act of 1882, as to devastavits and breaches of trust happening after the 1st of January, 1883, has made an important alteration. It provides that a married woman shall be capable of rendering herself liable in respect of and to the extent of her sepa-

rate property on any contract (45 & 46 Vict. c. 75, s. 1, sub-s. 2). Then having interpreted contract to "include the acceptance of any trust, or of the office of executrix or administratrix," it proceeds, "the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration" (Sect. 24). This section, like sect. 12 of the Act of 1870 (33 & 34 Vict. c. 93), relieves a husband who does not intermeddle with the trust from all liability for breach of trust or devastavit, irrespective of the question of whether or not he became entitled to any property in right of his wife.

Husband liable if he intermeddle.

If the husband does intermeddle his liability is not restricted to property which may come under his control, but extends to the whole trust estate, notwithstanding the breach of trust or devastavit may not have occurred in respect of the particular property with which he has intermeddled.

What is acting or intermeddling.

It will early become an important question as to what meaning is to be attached to "acted or intermeddled in the trust or administration," and what formal acts on the part of the husband will make him liable on that ground. Probably a husband joining in a transfer of trust property to pass the legal estate would be held to have acted (see *Urch* v. *Walker*, 3 My. & Cr. 702); on the other hand, he might probably act as agent of the

wife in receiving and paying away money, without making himself liable. (*Stacey* v. *Elph*, 1 My. & K. 195; *Dove* v. *Everard*, 1 R. & M. 231; Lewin, 180, 6th ed.)

Ante-nuptial *devastavit*, or breach of trust.

In the case of a woman married after 1st of January, 1883, her separate estate will during coverture be primarily liable for her ante-nuptial "contracts," which term includes trusts and administrations (*ante*, p. 39), and her husband will only be liable to the extent of property which he shall have acquired or become entitled to through her. (45 & 46 Vict. c. 75, ss. 13—15, *infra*, Chap. IV.)

CHAPTER IV.

WIFE'S ANTE-NUPTIAL LIABILITIES.

Husband liable at common law for wife's liabilities due at marriage.

As the law by marriage gave to the husband all his wife's personal estate in possession and the power of recovering her personal estate in action, it attached to him a corresponding liability, that of being sued for all debts, contracts, and civil wrongs and liabilities contracted or incurred by the wife before marriage.

Who liable in case of woman married before 9th August, 1870.

This is still the law in the case of a woman married before 9th of August, 1870. The action, however, must be against the husband and wife jointly and not against the husband alone (*France* v. *White*, 1 M. & G. 731; *Mitchinson* v. *Hewson*, 7 T. R. 348). If the husband dies before judgment the right of action remains against the widow (*Woodman* v. *Chapman*, 1 Camp. 189). If the wife dies before a joint judgment is obtained the husband as such is discharged and can only be made liable if he takes out administration to her effects. (Addison, Con. 346; Leake, Con. 1245.)

Separate estate liable.

During the coverture and afterwards the separate estate of the wife was liable for her ante-nuptial liabilities. (*Chubb* v. *Stretch*, L. R., 9 Eq. 555; 39 L. J., Ch. 329.)

Woman married between 9th Aug., 1870, and

As to women married between the 9th of August, 1870, and the 30th of July, 1874, the husband, notwithstanding he may have received a fortune with

his wife, "shall not be liable for the *debts* of the wife contracted before marriage"; but the wife shall be liable to be sued for, and property belonging to her for her separate use (notwithstanding a restraint on anticipation) (*Sanger* v. *Sanger*, L. R., 11 Eq. 470; 40 L. J., Ch. 372; *London & Provincial Bank* v. *Bogle*, 47 L. J., Ch. 301; L. R., 7 Ch. D. 773), shall be liable to satisfy, such debts as if she had continued unmarried (33 & 34 Vict. c. 93, s. 12), and execution can issue against her, and her husband need not be joined in the action. (*Williams* v. *Mercier*, 47 L. T. 140; 30 W. R. 720.) 30th July, 1874.

The husband of such a woman is, however, subject to the same liability in a joint action for her ante-nuptial breaches of contract and breaches of trust and torts, as the husband of a woman married before that date. And he will be liable as her administrator even for her debts contracted before marriage.

As to a woman married between the 30th of July, 1874, and the 1st of January, 1883, husband and wife may be jointly sued for any ante-nuptial debt of the wife (37 & 38 Vict. c. 50, s. 1), and also for damages in respect of any torts committed by the wife before marriage, or by reason of the breach of any contract made by the wife before marriage, and in such action the husband shall be liable (s. 2), but only to the extent of the following assets (s. 5):—(*a*), the value of the personal estate in possession of the wife, which shall have vested in the husband; (*b*), the value of choses of action of the wife which the husband has or might with reasonable diligence have reduced into possession; (*c*), the value of the chattels real of the wife which shall Woman married between 30th July, 1874, and 1st Jan., 1883.

have vested in the husband and wife; (*d*), the value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received; (*e*), the value of the husband's interest in any property which the wife, in contemplation of her marriage with him, shall have transferred to him or to any other person; and (*f*), the value of any property which the wife, in contemplation of her marriage with the husband, shall, with his consent, have transferred to any person with the view of defeating or delaying her existing creditors. (*De Gruchy* v. *Wills*, 48 L. J., C. P. 726; L. R., 4 C. P. D. 362.) There is no right of action against the husband alone after the death of the wife. (*Bell* v. *Stocker*, 31 W. R. 183.)

In an action against the husband and wife, it is not necessary to allege assets of the wife in the hands of the husband, but for the husband to plead that he has not received assets, or assets of a certain amount only (*Matthews* v. *Whittle*, 49 L. J., Ch. 359; L. R., 13 Ch. D. 811). Having paid away the assets received with his wife in discharge of her ante-nuptial liabilities, he is not liable to any subsequent action. (*Fear* v. *Castle*, L. R., 8 Q. B. D. 380; 51 L. J., Q. B. 279.)

Even the lastly-noticed Act did not exempt the husband from being a contributory in respect of shares held by his wife before her marriage. (*Ex parte Hatcher*, L. R., 12 Ch. D. 284; 48 L. J., Ch. 723.)

Woman married after 1st Jan., 1883;

As to a woman married after the 1st of January, 1883, her liability for ante-nuptial obligations is somewhat extended by the 45 & 46 Vict. c. 75,

s. 13, and so is that of a woman married before that date, but only to the extent of separate property to which she may become entitled by virtue of that Act, and to which she would not have been entitled for her separate use if that Act had not been passed. (*Ante*, p. 14.)

and woman married before, but acquiring property after.

The terms of the 13th section are as follows:— "A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not

Wife primarily liable for ante-nuptial liabilities.

have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed."

"Contract" includes trust or administration.

We have previously noted that the word "contract" includes "the acceptance of any trust or of the office of executrix or administratrix." (*Ante*, pp. 39, 45.)

Husband liable to extent of property acquired by the marriage.

The husband may, however, be liable for his wife's ante-nuptial obligations if he has become entitled to any property from or through her by marriage. "A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband

married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid." (45 & 46 Vict. c. 75, s. 14.)

Joint action against husband and wife.

A husband and wife may be jointly sued in respect of any such debt or other liability (whether for contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. (Sect. 15.)

CHAPTER V.

POST-NUPTIAL LIABILITIES CREATED BY THE WIFE.

SECT. 1.—*Contracts.*

Common law incapacity of wife to contract except as agent of husband.

AT common law a married woman was incapable, except her husband was civilly dead, or where she was trading under the custom of the City of London (Leake, Cont. 562), of making a valid contract. So far as contracts made by her were binding, they were considered as the contracts of her husband, she being his agent.

Husband's rights on wife's contracts.

The husband was entitled to the benefit of all contracts executed by the wife, and all executory contracts made by her without his knowledge but for his benefit (*Millard* v. *Harvey*, 34 Beav. 237). He was entitled to claim the wife's earnings, and to sue upon bonds, bills, or promissory notes, made payable to her during the marriage (*Burrough* v. *Moss*, 10 B. & C. 558). He might give her an interest therein by joining her in the action (*Philliskirk* v. *Pluckwell*, 2 M. & S. 393), and in the latter case the action would survive to the wife upon the death of the husband (Addison, Cont. 125). If her husband did not reduce the claim under her contracts into possession it survived to the wife. (*Dalton* v. *Midland Counties Rail. Co.*, 22 L. J., C. P. 178; 13 C. B. 474, *per cur.*)

Husband's liability on wife's contracts.

The husband's liability upon the wife's contracts entered into during marriage depends upon the extent of her authority as his agent. This authority may be either express or implied. It is a question of fact for the jury, and if there is no evidence of express authority it must be proved by facts from which the authority may be reasonably inferred.

Presumed authority of wife during cohabitation.

While the husband and wife are living together the law presumes, until the contrary appears, an authority by the husband to his wife to contract for necessaries and order things for the family and children, which would naturally come within the province of the domestic department over which she has control (*Phillipson* v. *Hayter*, 40 L. J., C. P. 14; L. R., 6 C. P. 38; *Lane* v. *Ironmonger*, 13 M. & W. 368), and suited to the position or style in life in which the husband lives.

Presumption may be rebutted.

Though the state of cohabitation carries *primâ facie* evidence of the wife's agency to contract for necessaries, this is not a necessary presumption of law, and is capable of being rebutted by showing there was no authority in fact, and that the husband had forbidden his wife to pledge his credit. It is not necessary that he should have given notice to anyone of this prohibition. (*Debenham* v. *Mellon*, 50 L. J., Q. B. 155; L. R., 5 Q. B. D. 394; *Jolly* v. *Rees*, 15 C. B., N. S. 628; 33 L. J., C. P. 177; *Wallis* v. *Biddick*, 22 W. R. 77.)

Authority of wife when living apart.

A wife voluntarily leaving her husband without cause and without his consent carries no implied authority with her to maintain herself at his

expense or to pledge his credit. If he wrongfully compels her to leave his home he is bound to maintain her elsewhere, and if he makes no adequate provision for this purpose, she becomes an agent of necessity to supply her wants upon his credit. In such a case, inasmuch as she is entitled to a provision suitable to the husband's means and position, the sufficiency of any allowance which he makes under the circumstances is necessarily a question for the jury. Where the parties separate by mutual consent, they may make their own terms, and so long as the separation continues those terms are binding on both; and the wife has no authority to pledge the husband's credit, although the allowance is inadequate. (*Eastland* v. *Burchell*, 47 L. J., Q. B. 500; L. R., 3 Q. B. D. 432; *Johnson* v. *Sumner*, 27 L. J., Ex. 341; 3 H. & N. 261; *Biffin* v. *Bignell*, 31 L. J., Ex. 189; 7 H. & N. 877; *Manby* v. *Scott*, and notes 2 Sm. L. C. 429, 7th ed.; Leake, Cont. 570.)

Wife might contract with reference to her separate estate.

The Courts of equity which created the separate estate gave to a married woman as an incident to such estate the power to contract debts and engagements to be satisfied out of it. (*Johnson* v. *Gallagher*, 3 De G., F. & J. 494; 30 L. J., Ch. 298.)

The separate estate was held to be liable to all verbally contracted debts, charges, and obligations which the wife purported to incur with reference to or on the credit of her separate estate, and to all engagements in writing, notwithstanding no mention was made of the separate estate. (*Johnson* v. *Gallagher*, *supra*; *Wright* v. *Chard*, 29 L. J., Ch. 90; *Murray* v. *Barlee*, 3 My. & K. 223;

Owens v. *Dickenson*, Cr. & Ph. 53; *Ex parte Matthewman*, 36 L. J., Ch. 90; L. R., 3 Eq. 781; *Waynford* v. *Heyl*, 44 L. J., Ch. 567; L. R., 20 Eq. 321.)

A woman's capacity to contract is now placed on an entirely different footing.

Contracts entered into by wife after 1st Jan., 1883, valid,

As from the 1st of January, 1883, a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued thereon without joining her husband (45 & 46 Vict. c. 75, s. 1, sub-s. 2), and every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown. (Sub-sect. 3.)

and bind separate estate.

The effect of the last sub-section is, in the case of necessaries supplied to the wife, to shift the presumption formerly existing that she was contracting as the agent of the husband, and leaves the fact of agency as in any other case of agency to be proved by direct affirmative evidence.

Capacity to bind after-acquired separate property.

Formerly the contracts of a married woman could not be extended to bind separate property, her title to which had not accrued at the date of the contract or disposition (*Pike* v. *Fitzgibbon*, 50 L. J., Ch. 394; L. R., 17 Ch. D. 454; *Smith* v. *Lucas*, L. R., 18 Ch. D. 531; 30 W. R. 451). After the 1st of January, 1883, however, every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the con-

tract, but also all separate property which she may thereafter acquire. (45 & 46 Vict. c. 75, s. 1, sub-s. 4.)

Probably this sub-section is not intended to operate literally. For example, a married woman's bill of sale would not, it is assumed, be a good assignment of after-acquired chattels, so as to repeal in her favour the provisions of sect. 5 of the Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), which became law on the same day. Probably it was only intended to correct *Pike* v. *Fitzgibbon* (*supra*), and allow a creditor of a married woman to enforce his claim against such separate estate as she may be possessed of at the time of judgment.

Sect. 2.—*Torts.*

Husband and wife jointly liable for wife's torts during coverture.

For any tort committed by a married woman during coverture she is liable at common law, but because she has no separate existence she cannot be sued alone, her husband must be joined with her and the action brought against the two (*Capel* v. *Powell*, 34 L. J., C. P. 168; 17 C. B., N. S. 743), and this is so even where the two are living apart unless under a judicial separation. (*Head* v. *Briscoe*, 2 L. J., C. P. 101; 5 C. & P. 484.)

Husband liable only during coverture.

After the death of the wife or dissolution of the marriage the husband ceases to be liable (*Capel* v. *Powell*, *supra*), unless he has participated in the tort.

Liability of wife after death

Upon the death of the husband or dissolution of the marriage the wife remains liable for all tor-

tious acts in which she has participated during the coverture. (Add. Torts, 108.) of husband.

Even in equity a married woman's separate estate was not prior to the recent Act liable to her general torts, committed during coverture. (*Waynford* v. *Heyl*, 44 L. J., Ch. 567; L. R., 20 Eq. 321.) Separate estate not liable.

After the 1st of January, 1883, a married woman shall be capable of suing and being sued in tort in all respects as if she were a *feme sole*, and her husband need not be made a party to the action, and any damages recovered against her shall be payable out of her separate property. (45 & 46 Vict. c. 75, s. 1, sub-s. 2.) Wife liable after 1st Jan., 1883, and may be sued alone.

This sub-section also extends to contracts, and its operation seems to extend a married woman's liability to a class of cases—mixed questions of contract and tort—upon which neither husband or wife were formerly liable. Thus, although the husband and wife were liable for the frauds of the wife, she was not liable for, nor could the husband be sued in respect of, a fraud which was directly connected with a contract by her, and which was in fact the means of effecting it, since the cause of action was the contract which the wife had no authority to bind her husband by (*Fairhurst* v. *Liverpool and Adelphi Loan Association*, 23 L. J., Ex. 163; 9 Ex. 429), as, for example, a false representation of the wife that she was unmarried, whereby the plaintiffs were induced to take her promissory note (*ib.*; and see *Collett* v. *Dickinson*, 26 W. R. 403), or a fraudulent representation by her that a bill of exchange was accepted by her husband. Liability for frauds inducing contracts.

(*Wright* v. *Leonard*, 30 L. J., C. P. 365; 11 C. B., N. S. 258.)

Frauds by wife as agent of the husband.

Where the wife is acting as agent of the husband and within the scope of her employment commits a fraud the husband is liable. (*Taylor* v. *Green*, 8 C. & P. 316.)

Sect. 3.—*Crimes.*

Crimes of wife in husband's absence;

When a wife commits a criminal offence in the absence of her husband, even though acting by his order, she may be convicted. (*R.* v. *Morris*, R. & Ry. 270.)

—in husband's presence.

Generally when a criminal act is committed by a wife in the presence of her husband the law presumes that she acted under his compulsion, and on that ground excuses her from punishment. (4 Bl. Com. 28; Arch. Cr. Pl. 22.)

The presumption of coercion may, however, be rebutted by evidence that she was acting voluntarily and was principally instrumental in the commission of the crime (*R.* v. *Hammond*, 2 Leach, 499). Thus, when a woman wrote a threatening letter and sent it by her husband, who was ignorant of the contents, it was held that she alone was punishable. (*Ib.*)

Wife liable for treason and crimes against nature, though done under coercion.

Even the immunity extended to a woman acting or presumed to be acting under the coercion of her husband does not apply to treason, or to crimes prohibited by the law of nature, such as murder or manslaughter. (1 Hale, P. C. 45; 4 Bl. Com. 29.)

A woman may be convicted jointly with her husband of keeping a bawdy house. (*Reg.* v. *Williams*, 10 Mod. 63; 4 Bl. Com. 29.)

Offences of which wife cannot be convicted.

Husband and wife being one person in law cannot alone be guilty of a conspiracy. A woman cannot be an accessory after the fact in receiving her husband bodily when he has committed a felony, nor can she be convicted of receiving stolen goods from her husband though she know them to have been stolen (*Reg.* v. *Brooks*, 22 L. J., M. C. 121). When a husband and wife are jointly indicted as receivers the question with reference to her liability to conviction ought to be left to the jury whether she received the property from her husband, and if not from him whether she received it in his absence (*Reg.* v. *Wardroper*, 29 L. J., M. C. 116). She could not be convicted of receiving if the goods were first brought to the house by the husband. (*Ib.*)

Non-liability of wife for larceny from husband at common law.

At common law, as husband and wife are one person, the wife could not be guilty of larceny in simply taking away her husband's goods; if a stranger assist her (and there is no evidence of adultery or intention to commit adultery), the stranger is equally not guilty (*Reg.* v. *Avery*, 28 L. J., M. C. 185; 7 W. R. 431), and even an adulterer cannot be convicted of receiving goods stolen by the wife (*Reg.* v. *Kenny*, 46 L. J., M. C. 156; L. R., 2 Q. B. D. 307.) But where a woman elopes, and she and her paramour jointly carry off the husband's property, this amounts to larceny in the paramour, if there is evidence of the adultery. (*Reg.* v. *Featherstone*, 23 L. J., M. C. 127; *Reg.* v.

Berry, 7 W. R. 240; *Reg.* v. *Flatman*, 42 L. T. 159.)

Statutory liability.

This rule of law has been modified so as to make the wife capable of larceny from her husband. By the 45 & 46 Vict. c. 75, s. 16, it is enacted that "A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband." The criminal liability of the wife is, therefore, to be ascertained by the corresponding liability of the husband, which is contained in the 12th section, and, so far as now material, is as follows:—"Every woman shall have the same remedies and redress, by way of criminal proceedings, for the protection of her own separate property as if such property belonged to her as a *feme sole:* Provided always, that no criminal proceedings shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her; nor while they are living apart, as to or concerning any act done by the husband while they are living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife."

How far husband competent witness against the wife.

It is a general rule of evidence that in criminal cases husbands and wives are not competent to give evidence for or against each other. To this

rule was the exception, amongst others, that in all cases where the husband is indicted for a personal injury to the wife or the wife for a personal injury to her husband, the injured party is a competent witness against the other (*R.* v. *Audley*, 1 St. Tr. 393; *R.* v. *Azir*, 1 Str. 633). It is doubtful whether on an indictment for a mere criminal offence by the wife against the property of the husband the latter would be a competent witness against her, since, although sect. 12 of 45 & 46 Vict. c. 75, provides that in any proceeding under that section a husband and wife shall be competent to give evidence against each other, any statute or rule of law to the contrary, yet it makes no such provision as to proceedings under sect. 16, unless the provision can be implied from the words "in like manner."

CHAPTER VI.

CONTRACTS AND TRANSFERS BETWEEN HUSBAND AND WIFE.

Marriage destroys obligations between husband and wife.

As a general rule at common law all contracts entered into between husband and wife were put an end to by the marriage, and all debts and liabilities *inter se* were destroyed. To this rule there was an exception in favour of the rights of third parties, that is, where the wife held the obligation of the husband as legal personal representative, and the extinguishment of the obligation would affect the rights of creditors or legatees (*Price* v. *Price*, 48 L. J., Ch. 478; L. R., 11 Ch. D. 163). Moreover, the rule only extended to contracts between the parties upon which a right of action could accrue during the coverture (*Cage* v. *Acton*, 1 Ld. Raym. 515). And where a man covenanted to pay a woman an annuity during her life, it was held that the covenant was only suspended during coverture. (*Fitzgerald* v. *Fitzgerald*, L. R., 2 P. C. 83, and see *Milbourn* v. *Ewart*, 5 T. R. 381.)

Not if taken in name of trustee.

If a woman took a security in the name of a trustee, marriage with her debtor would not release it. (1 Bright, H. & W. 20.)

Not if parties married after 1st January, 1883.

In the case of a woman married after 1st of January, 1883, marriage will not have the effect of destroying ante-nuptial obligations between the

parties. In the case of the woman, her rights of action will remain her separate property (45 & 46 Vict. c. 75, ss. 2, 24), in respect of which she will have her right of action against her husband. The husband seems to have a corresponding right against the wife in respect of ante-nuptial contracts and obligations. (Sect. 13.)

Incapacity of husband and wife to contract.

A man cannot contract with himself or make an assurance to himself of that which he already has, and on the ground of the unity of person of husband and wife there was at common law an absolute incapacity in the husband and wife after marriage to contract with each other or make transfers of property directly to each other.

Competency in equity.

Equity, however, recognized the power of a wife to contract with her husband without the intervention of a trustee, not only in respect of her separate estate but in respect of all matters in which for the purposes of the contract she may be regarded as a *feme sole* (Fry, 116, 649), and accordingly upheld an agreement by a wife to compromise a divorce suit which she had instituted (*Vansittart* v. *Vansittart*, 27 L. J., Ch. 222; 2 De G. & J. 249), and an agreement by a wife to live apart from her husband. (*Besant* v. *Wood*, L. R., 12 Ch. D. 622.)

Statutory power of contract between husband and wife.

After the 1st of January, 1883, a married woman by virtue of the M. W. P. Act, 1882, has the same capacity of contract with her husband that she has with a stranger. (*Ante*, Chap. V. Sect. 1.)

Loans by wife to husband.

In equity a married woman could lend money out of her separate estate to her husband, and in

an administration suit rank for proof with other creditors (*Woodward* v. *Woodward*, 3 De G., J. & S. 672; 11 W. R. 1007), if her claim was corroborated. (*Whittaker* v. *Whittaker*, 51 L. J., Ch. 737; 46 L. T. 802.)

45 & 46 Vict. c. 75, s. 3. Loans to a trader husband.

Now it is provided by the M. W. P. Act, 1882, that "any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied." (45 & 46 Vict. c. 75, s. 3.)

This places a married woman, so far as loans to her husband (if a trader) are concerned, in a somewhat worse position than before, and assimilates such loans to loans to a trader made by a lender who takes interest varying with the profits under 28 & 29 Vict. c. 86. (See 1 Lindley on Partnership, 43.)

It is assumed that if the wife lend money to her trader husband, and take a mortgage for it, she will not, in the event of his bankruptcy, be deprived of any of the ordinary rights of a mortgagee, so as to be postponed to other creditors. (*Ex parte Sheil, Re Lonergan*, 46 L. J., Bkcy. 62; L. R., 4 Ch. D. 789.)

The Act does not in express terms relate to the case of the husband liquidating or compounding

with his creditors, or to the administration of the estate of a husband who has died insolvent. The 10th section of the Judicature Act, 1875 (38 & 39 Vict. c. 77), which provides that the rules of law applicable in bankruptcy as to the rights of secured and unsecured creditors, and as to debts and liabilities provable, shall apply in the administration of insolvent estates, does not seem to extend the 3rd section of the M. W. P. Act, 1882, to an administration. The latter section makes assets in bankruptcy what would not otherwise be assets, and the 10th section of the Judicature Act is not applicable to a case where the effect of applying it will be to alter the property to be administered, and not merely to alter the rule of administration. (*Re Withernsea Brickworks Co.*, L. R., 16 Ch. D. 337; 50 L. J., Ch. 185.)

Conveyances between husband and wife.

The power of husband and wife to execute assurances direct to each other has been given by the Conveyancing Act of 1881, which provides that "freehold land, or a thing in action may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person" (44 & 45 Vict. c. 41, s. 50). This section does not enable a man to assign leaseholds to his wife, or a woman to her husband. (Hood and Challis, Conv. Acts, 159.)

Implied gifts by wife to husband.

Personal estate belonging to the wife for her separate use may be given by her to her husband, or may by her be permitted to be received by her

husband under circumstances from which an intention to give it to him will be implied. Thus, if a sum of money is given to a wife for her separate use, without the intervention of a trustee, the payment of that sum to the husband makes him a trustee, and he is bound to hold it for the separate use of the wife; but if after he has received it he, with the knowledge and assent of the wife, employs it in his business or in expenditure for the use of the family, this puts an end to the trust for her separate use (*Gardner* v. *Gardner*, 1 Giff. 126; *Pawlet* v. *Delaval*, 2 Ves. sen. 663); and so if she permits her husband to receive the rents or income of her separate estate and spend it (*Smith* v. *Camelford*, 2 Ves. 716), or permits it to be paid to his bankers to his separate account *Caton* v. *Rideout*, 1 Mac. & G. 599). And in such cases she will be precluded after his death from charging his estate with what he has thus received. (*Squire* v. *Dean*, 4 Bro. C. C. 326; *Powell* v. *Hankey*, 2 P. Wms. 82.)

of corpus;

of income.

Gift implied from wife's knowledge of husband's receipt.

In general, if a wife see her husband receive her separate property and deal with it as his own she will be held to have made a gift of it to him, notwithstanding he may be one of the trustees of the instrument creating the separate use (*Caton* v. *Rideout*, *supra*). And on this ground a wife was held not to be entitled to a balance of rents of her separate estate which at the time of her husband's death was standing to his account at a bank (*Beresford* v. *Armagh*, 13 Sim. 643). Upon the same principle where trustees of the wife had lent the settlement moneys to the husband it was held upon his bankruptcy that the trustees could not

Gift of income in case of loan of principal to husband.

prove for the interest on the principal (*Ex parte Green, Re Ellis*, 2 L. J., Bkcy. 2; 2 Dea. & Ch. 113). Neither upon such a loan could the wife hold the trustees liable for neglecting to enforce payment of accrued arrears. (*Payne* v. *Little*, 26 Beav. 1.)

Wife's claim on debtor satisfied by payment or settlement in account with husband.

And where there has been practically payment to the husband, as where sums due to the wife for her separate use have with her acquiescence and consent been retained by the debtor and allowed for by him in accounts between himself and the husband, this will discharge the debtor (*Carter* v. *Anderson*, 3 Sim. 370; *Bartlett* v. *Gillard*, 3 Russ. 149). But accruing payments could not be set off against prior existing claims against the husband. (*Payne* v. *Little*, 26 Beav. 1.)

If gift not implied, wife entitled to reimbursement out of husband's estate.

In accounting husband allowed extra expenses incurred for wife.

If the wife has neither expressly nor by acquiescence sanctioned her husband's receipt for his own use of her income she will be entitled to reimbursement out of his estate of the full amount received (*Parker* v. *Brooke*, 9 Ves. 583). But where the consent of the wife to her husband receiving the income could not be presumed on account of her lunacy an allowance was made to the husband of a proper sum for the extra cost he had incurred in her maintenance. (*Att.-Gen.* v. *Parnther*, 3 Bro. C. C. 441.)

No gift to husband when wife ignorant of husband's receipt.

The presumed assent depends upon the wife's knowledge of the facts, and a wife cannot be presumed to have assented to her husband receiving that which she did not know he was receiving. (*Dixon* v. *Dixon*, 27 W. R. 282.)

No implied gift from

The mere transfer by the wife's consent of the corpus of a fund settled to her separate use into

corpus remaining in name of husband,

or purchases taken in his name.

the name of the husband, is not, as in the case of the income, any evidence of a gift by the wife (*Rich* v. *Cockell*, 9 Ves. 369; *Rowe* v. *Rowe*, 17 L. J., Ch. 357; 2 De G. & Sm. 294). And where the savings of a wife's separate estate were invested in the purchase of real estate, which was conveyed to the husband to such uses as he should appoint, after his death it was established by evidence that she refused to allow the purchase-money to be paid unless he gave her an acknowledgment that the property should belong to her in the event of her surviving him, and the husband having notwithstanding devised the property to his brother, it was held that the latter was a trustee for the wife (*Darkin* v. *Darkin*, 23 L. J., Ch. 890; 17 Beav. 578). And where a husband received the corpus of the wife's separate estate, and, unknown to her, employed it in the part payment of real estate conveyed to him alone, it was held that she was entitled to a lien on the real estate for the amount. (*Scales* v. *Baker*, 28 Beav. 91.)

Implied gift by husband to wife of purchases, &c. in her name.

We have already seen (*ante*, p. 18) that purchases or transfers of real or personal estate, taken by a husband in the name of his wife alone, or jointly with himself, will be presumed to have been intended as a gift to her in the event of her surviving, unless evidence of contemporaneous acts, showing a different intention, be adduced (*Glaister* v. *Hewer*, 8 Ves. 199; *Dummer* v. *Pitcher*, 2 My. & K. 273; *Kingdon* v. *Bridges*, 2 Vern. 67; 1 Bright, H. & W. 32). So if the husband lends money upon a mortgage taken in the names of himself and his wife (*Christ's Hospital* v. *Budgin*,

2 Vern. 683). In the same way money expended voluntarily by the husband in building upon or improving his wife's estate, redeeming the land tax, or enfranchising copyholds, is presumed to be intended for her benefit. (*Campion* v. *Cotton*, 17 Ves. 263.)

Gift not implied of payment by mistake of wife's debts.

Where, however, the husband paid off part of a mortgage debt upon his wife's leaseholds, under the idea that he was absolutely entitled, his executor was allowed to stand in the place of the mortgagee (*Pitt* v. *Pitt*, T. & R. 180; *Outram* v. *Hyde*, 24 W. R. 268). And so, where under a like mistake the husband paid a balance of purchase-money, he was held entitled to a lien on the estate. (*Neesom* v. *Clarkson*, 4 Hare, 97.)

Presumption of advancement rebutted.

The presumed intention of an intended gift by way of advancement may be rebutted, even by the evidence of the husband. (*Devoy* v. *Devoy*, 26 L. J., Ch. 290; 3 Sm. & G. 403.)

No presumption of a gift arises in the case of an investment in the name of a purchaser and his deceased wife's sister, with whom he has gone through the form of marriage. (*Soar* v. *Foster*, 4 K. & J. 152.)

Gifts by husband to wife in fraud of creditors.

An investment by a trader by way of advancement for his wife would be liable to be set aside at the instance of her creditors in the event of his bankruptcy (*Glaister* v. *Hewer*, 8 Ves. 195; 11 Ves. 377). And where an advancement is made by a person largely indebted at the time, it will be liable to be set aside, under 13 Eliz. c. 5, as void against his creditors (*Barrack* v. *M'Culloch*, 26 L. J., Ch. 105; 3 K. & J. 110; but see *Drew*

v. *Martin*, 33 L. J., Ch. 367; 2 H. & M. 130). But it would not be set aside at the instance of the executor of the husband, his estate proving to be insolvent (*Kingdon* v. *Bridges*, 2 Vern. 67). The rights of creditors to impeach gifts by a husband to his wife are preserved by the M. W. P. Act, 1882, which enacts that nothing in the Act contained "shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed." (45 & 46 Vict. c. 75, s. 10.)

Power of husband and wife to effect life policies for benefit of each other and family.

This Act also gives husband and wife each power to effect assurance policies on their own lives for the benefit of the other and their children. "A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: provided, that if it shall be proved that the policy

was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid" (*Holt* v. *Everall*, L. R., 2 Ch. D. 266; 45 L. J., Ch. 433). "The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part." (Sect. 11.)

Where a husband effected a policy on his life

for the benefit of his wife and children, but died without declaring the interests they were respectively to take, the Court, in the first instance, directed the income to be paid to the wife for life, with remainder to the children as tenants in common; but afterwards it appearing that the husband had died insolvent, and that the income would not be sufficient to support the wife and children, directed distribution, as upon an intestacy (*Re Mellor's Trusts*, L. R., 7 Ch. D. 200; 47 L. J., Ch. 246.) And where a husband effected a policy for the benefit of his wife for her separate use and of his children as he should appoint, and died without exercising the power, leaving his widow and one child, it was held that the policy money must be paid as to one moiety to the widow, and the other moiety invested in trust for the child, and the income during minority paid to the widow for the infant's maintenance. (*Re Edwards*, 28 W. R. 72.)

CHAPTER VII.

WIFE'S SEPARATE TRADING.

Married woman may trade by custom of London,

By the custom of the City of London a married woman was allowed to be a trader, and to contract as if she were not married (*Beard* v. *Webb*, 2 B. & P. 93). So where the coverture was at an end by divorce or judicial separation, or the husband was a convicted felon.

or by permission of husband.

Apart, also, from any custom, a woman may carry on a business separate and apart from her husband by virtue of an express agreement between them before marriage, or without such agreement if he permits her to do so after marriage. (*Ashworth* v. *Outram*, 36 L. T. 400; L. R., 5 Ch. D. 923, per Malins, V.-C.; 2 Roper, 165.)

She had, however, prior to 9th of August, 1870, no independent existence as a trader otherwise than in the instances first mentioned. She was considered merely as the agent of her trustee, if the business property was vested in a trustee, or the agent of her husband if there was no such trustee; and the trustee or husband, as the case might be, became liable upon the trade engagements according to the ordinary rules of principal and agent where the agent is acting within the scope of his authority (2 Bright, H. & W. 301; *Phillipson* v. *Hayter*, 40 L. J., C. P. 14; L. R., 6 C. P. 38). She could not give or negotiate

securities in her own name; she could not bring an action in her own name to recover trade debts, and was otherwise fettered in her trading.

Married woman's separate existence in respect of her trade.

The Married Women's Property Act, 1870, gave a wife a legal existence as a separate trader, and provided that the wages and earnings—which include by implication the stock-in-trade and capital, without which there could be no wages or earnings (*Ashworth* v. *Outram*, 46 L. J., Ch. 687; L. R., 5 Ch. D. 923)—of any married woman gained after the 9th of August, 1870, in any trade in which she is engaged or which she carries on separately from her husband, shall be deemed and taken to be property held and settled to her separate use, and for which her receipts alone shall be good discharges (33 & 34 Vict. c. 93, s. 1). She was also enabled to sue for the recovery of any debts or obligations owing to her in respect of such trade. (Sect. 11.)

Extended trading powers given by M. W. P. Act, 1882.

The powers of a married woman as a trader have been somewhat amplified by the Married Women's Property Act, 1882. By virtue of the power of making contracts (*ante*, Chap. V. s. 1) contained in the Act, she may buy, sell, incur obligations, and become entitled to benefits and rights under contracts, give, accept, and negotiate bills of exchange and other securities, and sue and be sued alone in respect of such rights and obligations in all respects as if she were a *feme sole* (45 & 46 Vict. c. 75, s. 1). All wages, earnings, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged or which she carries on separately from

her husband shall be her separate property. (*Ib.* ss. 2, 5.)

Where a wife is carrying on a business separately from her husband, she can obtain an injunction restraining him from in any way interfering with the business, and even from entering the house. (*Wood* v. *Wood*, 19 W. R. 1049; *Green* v. *Green*, 5 Hare, 400, n.)

Injunction against husband.

The question whether the trade is carried on separately by the wife or jointly with the husband, is one of fact for the jury (*Smallpiece* v. *Dawes*, 7 C. & P. 40). If they find it is a joint business the stock-in-trade will be liable to the debts of the husband. (*Jarman* v. *Woolloton*, 3 T. R. 618.)

Separate trading a question of fact.

If the husband take advantage of the trade carried on by his wife in her own name by living on the profits, he will generally be liable for the debts of the business, the presumption being that the wife is conducting the trade as his agent (*Petty* v. *Anderson*, 3 Bing. 170). Thus, where the husband and wife were living together and the business was carried on in the house, the husband assisting though the wife's name appeared alone in the purchase of goods in the plaintiff's invoices and receipts, and in the rate books, and she paid the rent of the house, it was held that, inasmuch as articles were furnished with his knowledge and he was subsisting on the profits of the business, the husband was liable for goods furnished to the wife for the purposes of the business. (*Ib.*)

Husband liable where it may be presumed wife is his agent.

Mere cohabitation is not conclusive of the question whether the wife is carrying on a separate business (*Lovell* v. *Newton*, L. R., 4 C. P. D. 7;

Cohabitation not inconsistent with separate trading.

27 W. R. 366; 39 L. T. 609), neither is the fact that the husband is living upon the wife's earnings in the business (*Ib.*). Thus, a butcher having become incapable through intemperance of carrying on his business and having been removed to a workhouse, his wife borrowed money and carried on the business. On his return home the husband did not interfere with the business, but was supported there by the wife out of her earnings: the Court found, as an inference of fact, that the wife was carrying on the business separately from the husband. (*Ib.*)

Interference of husband creating personal liability.

If the husband takes such a part in his wife's business as to make himself personally liable, the business is not carried on by the woman separately from her husband (*Laporte* v. *Costick*, 23 W. R. 131; 31 L. T. 434). Thus, where the wife carried on the business of letting lodgings, but the house was taken in the name of the husband, who being in ill health was unable to take much part in the business, but who did all he could, kept accounts, conducted correspondence and gave orders some in his own name, so as to make himself liable for the goods supplied, it was held there was no separate trading. (*Ib.*)

It is not inconsistent with a separate trading, if the husband does not interfere with the conduct of the business "more than you would naturally expect a person living in the same house and in the relation of husband of the person who was carrying it on." (*Ashworth* v. *Outram*, L. R., 5 Ch. D. 923; 46 L. J., Ch. 687, per Coleridge, C. J.)

Married woman's liability to bankruptcy.

Before the passing of the M. W. P. Act, 1882, a married woman could not be made a bankrupt (*Ex parte Jones, Re Grissell*, L. R., 12 Ch. D. 484; 48 L. J., Bkcy. 109). Now it is provided that "every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*." (45 & 46 Vict. c. 75, s. 1, sub-s. 5.)

This section does not extend the liability of a married woman who is not a trader. It seems doubtful whether such a woman can become subject to the bankruptcy laws.

CHAPTER VIII.

WIFE'S POWERS OF INVESTMENT.

Married woman may invest.

FOR the purposes of investment, as well as for other purposes, a married woman is now capable of contracting and rendering herself liable to the extent of her separate estate as if she were a *feme sole*.

Investments separate estate.

All stocks, funds, deposits in banks, annuities, and all shares, stock, debentures, debenture stock, and other interests in any corporation, company, or public body, which shall after the 1st January, 1883, be allotted to or placed or transferred in or into the name of a married woman solely or jointly with any other person than her husband shall be deemed, until the contrary be shown, to be her separate property, in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable. (45 & 46 Vict. c. 75, ss. 7, 8.)

Right of married woman to compel registration,

A mandamus will issue to compel a company or corporation to register shares in the name of a married woman (*Reg.* v. *Carnatic Rail. Co.*, L. R., 8 Q. B. 299; 42 L. J., Q. B. 169), unless the admission of a married woman is contrary to the constitution of the corporation.

unless provisions of articles of association, &c.,

It is provided by the Act, "that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman

to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company." (45 & 45 Vict. c. 75, s. 7.) to the contrary.

Investments so made or acquired by a married woman may be disposed of and transferred by her without her husband joining in the transfer. (*Ib.* sect. 9.) Investments transferable without husband's concurrence.

A married woman may effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly. (Sect. 11). Life policies.

If any investment shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband. (Sect. 10.) Investment by wife of moneys of husband without his consent.

CHAPTER IX.

ACTIONS AGAINST AND BY MARRIED WOMEN.

Independently of statutory authorization, married woman could not be sued alone.

At common law a married woman, even if living separate from her husband, could not render herself liable to be sued alone and as a *feme sole* (*Marshall* v. *Rutton*, 8 T. R. 545; Add. Cont. 131). Where she had separate estate she might enter into contracts and engagements to be satisfied out of it, in which case a Court of Equity would enforce the payment by a decree binding the trustee having the legal control of the property (*Hulme* v. *Tenant*, 1 Wh. & Tu. L. C. 554). It would, however, make no order upon the woman personally, so that judgment could not be obtained against her. (*Francis* v. *Wigzell*, 1 Madd. 264; *Atwood* v. *Chichester*, 47 L. J., Q. B. 300; L. R., 3 Q. B. D. 722; *Durrant* v. *Ricketts*, L. R., 8 Q. B. D. 177; 51 L. J., Q. B. 425; *McQueen* v. *Turner*, 30 W. R. 80; *Davis* v. *Ballenden*, 46 L. T. 797; *Davies* v. *Jenkins*, L. R., 6 Ch. D. 728; 26 W. R. 260; *Ortner* v. *Fitzgibbon*, 50 L. J., Ch. 17.)

Neither could she sue alone.

So at common law a married woman could not maintain an action alone and in her own name. Even in equity, when suing in respect of her separate estate, she had to sue by her next friend, and her husband was made a defendant in the action.

M. W. P. Act, 1870, gave power to sue in respect of statutory separate estate,

The Married Women's Property Act, 1870, enabled her (s. 11) to maintain an action in her own name in respect of property by the Act declared to be her separate property (*Davis* v. *Artingstall*, 42 L. T. 507; 49 L. J., Ch. 609), and gave her in her own name the same remedies for the protection of such property as if she were unmarried, a provision which was held to entitle her to petition without a next friend for the payment out of Court of a fund belonging to her for her separate use. (*Re Fisher's Trust*, 45 L. T. 504; 30 W. R. 56.)

and to be sued alone for ante-nuptial debts.

The Act also (s. 12) made her liable to be sued alone in respect of debts contracted before marriage, and in respect of such debts execution could issue against her as if she were unmarried (*Mercier* v. *Williams*, L. R., 9 Q. B. D. 337; 51 L. J., Q. B. 594). In every other case, however, her husband was required to be joined, even though the action was only to declare that property which by the Act became her separate property, might be chargeable with a debt contracted since the marriage. (*Hancocks* v. *Lablache*, 47 L. J., C. P. 514; L. R., 3 C. P. D. 197.)

By leave of Court a wife could sue or defend alone.

By Ord. XVI. r. 8, of R. S. C. married women were enabled, by leave of the Court or a judge, to sue or defend without their husbands, and without a next friend, on giving such security (if any) for costs as the Court or a judge might require. (*Brown* v. *North*, L. R., 9 Q. B. D. 52; 51 L. J., Q. B. 365.)

Now, in all cases wife may

A married woman's right of suing and defending alone have been further extended by the

sue or defend alone.

M. W. P. Act, 1882. Now a married woman is capable of suing and being sued either in contract, tort, or otherwise, as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceedings brought by or against her. Damages or costs recovered against her are payable out of her separate property, and not otherwise (45 & 46 Vict. c. 75, s. 1, sub-s. 2). This, so far as the right of suing is concerned, is repeated and emphasized as to actions touching her separate estate, in sect. 12, by which every woman, whether married before or after the Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

The right of action given to a woman by the united operation of these two sections, includes not only remedies in respect of injuries to her property—as in *Summers* v. *City Bank* (L. R., 9 C. P. 580; 43 L. J., C. P. 261), where a married woman, trading separately, sued her bankers by virtue of sect. 11 of the Act of 1870, for the dishonour of a cheque, and she was held entitled to do so, it being essential to the protection of her earnings, and in *Moore* v. *Robinson* (27 W. R. 312; 40 L. T. 99), where a woman living apart from her husband, having invested her earnings in the lease, &c., of a beer house, from which she

was wrongfully expelled, it was held, that she was entitled to maintain an action for damages for the expulsion—but also gives her a right of action in respect of personal wrong, as a libel (*Ramsden* v. *Brearley*, L. R., 10 Q. B. 147; 23 W. R. 294) or physical injury. If, however, the wife sue alone, and recover for the wrong done to her, this will not take away the husband's right to sue for the damage occasioned to himself solely. (See *Brockbank* v. *Whitehaven Junction Rail. Co.*, 31 L. J., Ex. 349; 7 H. & N. 834.)

We have previously (Chaps. IV. and V.) considered the cases in which an action will lie against a wife solely, when against the husband alone, and when the husband is jointly liable with the wife.

Misjoinder of husband entitling him to costs of defence.

Before joining a husband as co-defendant with the wife in respect of ante-nuptial liabilities, it should be ascertained that he is liable by reason of having acquired or become entitled to property through her, and that such property has not been exhausted by payments and judgments recovered in respect of such ante-nuptial liability (*Fear* v. *Castle*, L. R., 8 Q. B. D. 380; 51 L. J., Q. B. 279). For if in any such joint action, or in any action in respect of such liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife, if jointly sued with him. (45 & 46 Vict. c. 75, s. 15.)

It is to be observed, that the right of action against the husband given by statute for ante-nuptial liabilities of the wife, is a joint action against husband and wife (*Ib.*), so that no such action will lie against the husband alone after the death of the wife (*Bell* v. *Stocker*, 31 W. R. 183). Possibly, by force of sect. 23 of the M. W. P. Act, 1882, such an action would lie against the husband if sued jointly with the legal personal representative of the wife.

Form of judgment when husband and wife sued jointly for ante-nuptial liabilities.

In the case of a joint action against husband and wife in respect of ante-nuptial liabilities, the M. W. P. Act, 1882, has prescribed the form of the judgment if the plaintiff succeeds. If it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. (45 & 46 Vict. c. 75, s. 15.)

Judgment when woman sued alone.

In actions where the wife is sued alone, it would seem that the judgment will be a personal one against her by virtue of sect. 1, sub-s. 2 of the Act of 1882, the material terms of which are "a married woman shall be capable of * * * * being sued, either in contract or tort or otherwise, in all respects as if she were a *feme sole* * * * * and any damages or costs recovered against her in any such action or proceeding shall be payable out of

her separate property, and not otherwise." Upon the somewhat similar language of sect. 12 of the Act of 1870, "the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried." Jessel, M. R., observed, "That is, execution can issue against her as if she were unmarried." (*Mercier* v. *Williams*, L. R., 9 Q. B. 337; 51 L. J., Q. B. 594.)

Whether a judgment in tort enforceable against after-acquired property.

If it should be held that the judgment creates a liability only enforceable against the property and not against the person of the wife, it seems doubtful whether, in the case of a tort, the judgment can be enforced against any property of which she was not possessed at the time of incurring the liability, as sect. 1, sub-s. 4, of the M. W. P. Act, 1882, only makes after-acquired property liable in the case of contracts. (And see *Pike* v. *Fitzgibbon*, L. R., 17 Ch. D. 454; 50 L. J., Ch. 394.)

Actions between husband and wife.

The new Act contemplates actions between husband and wife, but it is not clear what is meant by the words "but, *except as aforesaid*, no husband or wife shall be entitled to sue the other for a tort" (*ante*, p. 82), unless it means that a wife may only sue her husband in tort in respect of a wrong to her separate estate, and the husband may not sue the wife in tort at all.

How tried.

The Act also provides a special tribunal for the trial of property questions between husband and wife, and enacts that, "in any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as afore-

said in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant, irrespectively of the value of the property in dispute) in England to the judge of the County Court of the district, or in Ireland to the chairman of the Civil Bill Court of the division in which either party resides, and the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said Court would be; and any order of a County or Civil Bill Court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same Court would be; and all proceedings in a County Court or Civil Bill Court under this section in which, by reason of the value of the property in dispute, such Court would not have had jurisdiction if this Act or the Married Women's Property Act,

1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only." (45 & 46 Vict. c. 75, s. 17; and see s. 10.)

Criminal proceedings for protection of wife's property.

A married woman can have the same remedies and redress by way of criminal proceedings for the protection of her property, as if it belonged to her as a *feme sole*, and in any indictment or other proceedings the property may be alleged to be hers. But no criminal proceedings shall be taken by any wife against her husband while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife (45 & 46 Vict. c. 75, s. 12). In

any such criminal proceedings by the wife against her husband she is a competent witness against him. (*Ib.*)

For the protection of her person.

A married woman may also institute criminal proceedings for the protection of her person. 24 & 25 Vict. c. 100, s. 43, empowers two justices (or a metropolitan police magistrate or stipendiary magistrate, s. 76), where a person shall be charged before them with an aggravated assault on a female to punish the offender with imprisonment with hard labour not exceeding six months, or a fine not exceeding (with costs) 20*l.*, and they may bind over the offender to keep the peace for a period not exceeding six months.

Husband guilty of aggravated assault, summary order for non-cohabitation.

A later statute (41 Vict. c. 19, s. 4), has provided that if a husband shall be convicted of an aggravated assault, the Court or magistrate convicting him may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with the husband, and such order shall have the force and effect of a decree of judicial separation on the ground of cruelty. Such order may further provide that the husband shall pay to his wife a weekly sum for her support, and that the legal custody of any children of the marriage under the age of ten years shall be given to the wife (see Dixon on Divorce, 355). There is a proviso that no order for the payment of money by the husband, or for custody of children by the wife, shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned, and there is an appeal to the High Court.

Weekly sum to wife for support, and custody of children.

CHAPTER X.

WIFE'S LIABILITY TO MAINTAIN PAUPER HUSBAND AND ISSUE.

PRIOR to the passing of the M. W. P. Act, 1870, a married woman having separate property was not liable under the Poor Law Acts for the maintenance of her husband or issue (*Coleman* v. *Overseers of Birmingham*, L. R., 6 Q. B. D. 615; 50 L. J., M. C. 92). That statute, however, contained a provision, which is re-enacted in the Act of 1882, that "Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such

Pauper husband.

relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a *feme sole* by the same actions and proceedings as money lent." (45 & 46 Vict. c. 75, s. 20.)

Children and grandchildren.

Without relieving the husband from any liability, the wife having separate property is also made liable for the maintenance of her pauper children and grandchildren in the like manner as the husband now is. (Sect. 21.)

APPENDIX.

MARRIED WOMEN'S PROPERTY ACT, 1870.

(33 & 34 VICT. c. 93.)

An Act to amend the Law relating to the Property of Married Women. [9th August, 1870.]

WHEREAS it is desirable to amend the law of property and contract with respect to married women:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Earnings of married women to be deemed their own property.

1. The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money, or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and be taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

Deposits in savings banks by a married woman to be deemed her separate property.

2. Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post office savings banks, any deposit hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is

Proviso.

made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such deposit or annuity or any part thereof to be paid to the husband.

As to a married woman's property in the funds.

3. Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband.

As to a married woman's property in a joint stock company.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint stock company that any fully paid-up shares, or any debenture or debenture stock, or any stock of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment and the dividends and profits

thereon, or any part thereof, to be transferred and paid to the husband.

As to a married woman's property in a society.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman: provided that if any such share, benefit, debenture, right or claim has been obtained by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

Deposit of moneys in fraud of creditors invalid.

6. Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed.

Personal property not exceeding 200*l.* coming to a married woman to be her own.

7. Where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same.

Freehold property coming to a married woman, rents and profits only to be her own.

8. Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same.

How questions as to ownership of property to be settled.

9. In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the County Court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs, as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room.

Married woman may effect policy of insurance.

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

As to insurance of a husband for benefit of his wife.

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the County Court of the district, or in Ireland by the Chairman of the Civil Bill Court of the division of the county, in which the insurance office is situated, and the receipt of such trustee shall be a good

discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

Married women may maintain an action.

11. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels, or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, moneys, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property.

Husband not to be liable on his wife's contracts before marriage.

12. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried.

Married woman to be liable to the parish for the maintenance of her husband.

13. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable

from such woman as if she were a feme sole by such and the same actions and proceedings as money lent.

Married woman to be liable to the parish for the maintenance of her children.

14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

Commencement of Act.

15. This Act shall come into operation at the time of the passing of this Act.

Act not to extend to Scotland.

16. This Act shall not extend to Scotland.

Short title.

17. This Act may be cited as the "Married Women's Property Act, 1870."

MARRIED WOMEN'S PROPERTY ACT (1870) AMENDMENT ACT, 1874.

(37 & 38 VICT. c. 50.)

An Act to amend the Married Women's Property Act (1870).
[30th July, 1874.]

WHEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Husband and wife may be jointly sued for her debts before marriage.

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt.

Extent to which husband liable.

2. The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets hereinafter specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned.

If husband without assets he shall have judgment for costs.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

Joint and separate judgment against husband and wife for debt.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

Assets for which husband liable.

5. The assets in respect of and to the extent of which the husband shall in any such action be liable, are as follows:

(1.) The value of the personal estate in possession of the wife which shall have vested in the husband:

(2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:

(3.) The value of the chattels real of the wife which shall have vested in the husband and wife:

(4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:

(5.) The value of the husband's estate or interest in any property, real or personal, which the wife, in contemplation of her marriage with him, shall have transferred to him or to any other person:

(6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors:

Provided that when the husband after marriage pays any debt of his wife, or has a judgment bonâ fide recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

Extent of Act.

6. This Act shall not extend to Scotland.

Short title.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874."

MARRIED WOMEN'S PROPERTY ACT, 1882.

(45 & 46 VICT. c. 75.)

An Act to consolidate and amend the Acts relating to the Property of Married Women. [18th August, 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act, (1870)":

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Married woman to be capable of holding property and of contracting as a feme sole.

1.—(1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee (pp. 22, 24).

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or

be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise (pp. 55, 57, 82).

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown (p. 55).

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire (pp. 56, 85).

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole (p. 77).

Property of a woman married after the Act to be held by her as a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (pp. 6, 20, 63, 74).

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied (p. 64).

Execution of general power.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act (p. 15).

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid (pp. 6, 14, 74).

As to stock, &c. to which a married woman is entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient primâ facie evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof (p. 15).

As to stock, &c. to be transferred, &c. to a married woman.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures,

debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not (pp. 17, 78).

Provided always, that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company (p. 78).

Investments in joint names of married women and others.

8. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband (pp. 17, 78).

As to stock, &c. standing in the joint names of a married

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any

woman and others.

share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband (pp. 25, 79).

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband (pp. 79, 87); and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed (p. 70).

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly (pp. 14, 79).

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the

creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part (p. 71).

13 & 14 Vict. c. 60.

Remedies of married woman for protection and security of separate property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort (pp. 82, 85). In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the

husband when leaving or deserting, or about to leave or desert, his wife (pp. 60, 87.)

Wife's ante-nuptial debts and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed (p. 49).

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been bonâ fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any Court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: provided

always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid (p. 50).

Suits for ante-nuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him, or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him (p. 83); and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only (pp. 51, 84).

Act of wife liable to criminal proceedings.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband (p. 60).

Questions between husband and wife as to property to be decided in a summary way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party

resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only (p. 85).

Married woman as an executrix or trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole (p. 39).

Saving of existing settlements, and the power to make future settlements.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman (p. 20), or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument: but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors (p. 31).

Married woman to be liable to the parish for the maintenance of her husband. 31 & 32 Vict. c. 122.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent (p. 89).

Married woman to be liable to the parish for the maintenance of her children.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren (p. 90).

Repeal of 33 & 34 Vict. c. 93.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act,

37 & 38 Vict. c. 50.

1874, are hereby repealed: provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act (p. 2).

Legal representative of married woman.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living (pp. 35, 84).

Interpretation of terms.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix (pp. 39, 45, 50), and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration (p. 44). The word "property" in this Act includes a thing in action (pp. 14, 20, 63).

Commencement of Act.

25. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

Extent of Act.

26. This Act shall not extend to Scotland.

Short title.

27. This Act may be cited as the Married Women's Property Act, 1882.

RULES OF THE SUPREME COURT,
DECEMBER, 1882.

RULES UNDER THE ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND SECTION 7 OF THE CONVEYANCING ACT, 1882.

1. No person authorized or appointed under the Act 3 & 4 Will. 4, c. 74 (in these rules referred to as the Fines and Recoveries Act) to take the acknowledgments of deeds by married women shall take any such acknowledgment if he is interested or concerned either as a party or as solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the acknowledgment.

2. Before a commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the commissioner shall require the terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot, or at the back thereof.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman shall be in the following form in lieu of the form set forth in section 84 of the Fines and Recoveries Act:

"This deed was this day produced before me and acknowledged by therein named to be her act and deed [*or* their several acts and deeds] previous to which acknowledgment [*or* acknowledgments] the said was [*or* were] examined by me separately and apart from

her husband [*or* their respective husbands] touching her [*or* their] knowledge of the contents of the said deed and her [*or* their] consent thereto and [each of them] declared the same to be freely and voluntarily executed by her."

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment:

"And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment."

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorized to take the acknowledgment:—

(Signed) *A. B.*

A judge of the High Court of Justice in England,
or A judge of the County Court of
or A perpetual commissioner for taking acknowledgments of deeds by married women,
or The special commissioner appointed to take the aforesaid acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorized to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every commission appointing a special commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments of deeds by married women, and shall there be filed. An index shall be prepared and kept in the said office, giving the names and addresses of the married women named in all such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors' Remuneration Act, 1881, or by special agreement, shall be as follows: anything in the Rules of

the Supreme Court as to costs, dated the 12th August, 1875, to the contrary notwithstanding:—

Charges under the Act 3 & 4 *Will.* 4, *c.* 74 (*the Fines and Recoveries Act.*)

	£	s.	d.
For the indorsements on deeds required by the Fines and Recoveries Act, to be entered on the court rolls of manors of the memorandum of production and memorandum of entry on court rolls, to be signed by the Lord Steward or deputy steward, each indorsement of memorandum 5*s.*, together	0	10	0
For the entries on the court rolls of deeds and the indorsements thereon, at per folio of 72 words	0	0	6
For taking the consent of each protector of settlement of lands	0	13	4
For taking the surrender by each tenant in tail of lands	0	13	4
For entries of such surrenders or the memorandums thereof in the court rolls, at per folio of 72 words	0	0	6

9. The following rules and orders are hereby repealed, except as to certificates not lodged before the 1st January, 1883, of acknowledgments by married women of deeds executed before the 1st January, 1883, and the affidavits relating thereto:—

The General Rules of the Court of Common Pleas, Hilary Term, 1834.

The General Rules of the Court of Common Pleas, Trinity Term, 1834.

The General Order of the Court of Common Pleas, dated the 24th November, 1862.

The General Order of the Court of Common Pleas, dated the 13th January, 1863.

10. These rules shall take effect from and after the 31st December, 1882.

RULES UNDER SECT. 2 OF THE CONVEYANCING ACT, 1882.

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to sect. 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the

person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under sect. 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be indorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The indorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

RULE UNDER THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

6. An alphabetical index of the names of the grantors of all powers of attorney filed under sect. 48 of the Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies or extracts which may be required shall be made by the Office.

(Signed) SELBORNE, C.
COLERIDGE, L. C. J.
G. JESSEL, M. R.
NATH. LINDLEY, L. J.
H. MANISTY, J.
EDW. FRY, J.

APPENDIX TO THE RULES.

FORM I.—DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature,
Central Office.

To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

I declare that the search [*or* searches] in the name [*or* names] of required to be made by the requisition for search, dated the is [*or* are] required for the purposes of a sale [*or* mortgage, *or* lease, *or as the case may be*], by *A. B.* to *C. D.*

Signature,
Address, and
Description.

Dated

FORM II.—DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes of a sale [*or* mortgage, *or* lease, *or as the case may be*] by *A. B.* to *C. D.*

FORM V.—REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.
Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married Women.
Royal Courts of Justice,
London.

In the matter of *A. B.* and *C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for certificates of acknowledgments of deeds by married women during the period from 18 to

18 both inclusive, according to the particulars mentioned in the schedule hereto.

The Schedule.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a particular Certificate.	Date of Deed if the Search relates to a particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM VII.—CERTIFICATE OF SEARCH BY ENROLMENT DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office,
Enrolment Department.

Certificate of Search pursuant to section 2 of the Conveyancing Act, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name [*or* names] of for the period from to , both inclusive, and that no deed or other document has been enrolled in the said office in that name [*or* in any one or more of those names] during the period aforesaid; *or*, and that except the described in the schedule hereto no deed or document has been enrolled in that name [*or* in any one or more of those names] during the period aforesaid.

THE SCHEDULE.

Dated

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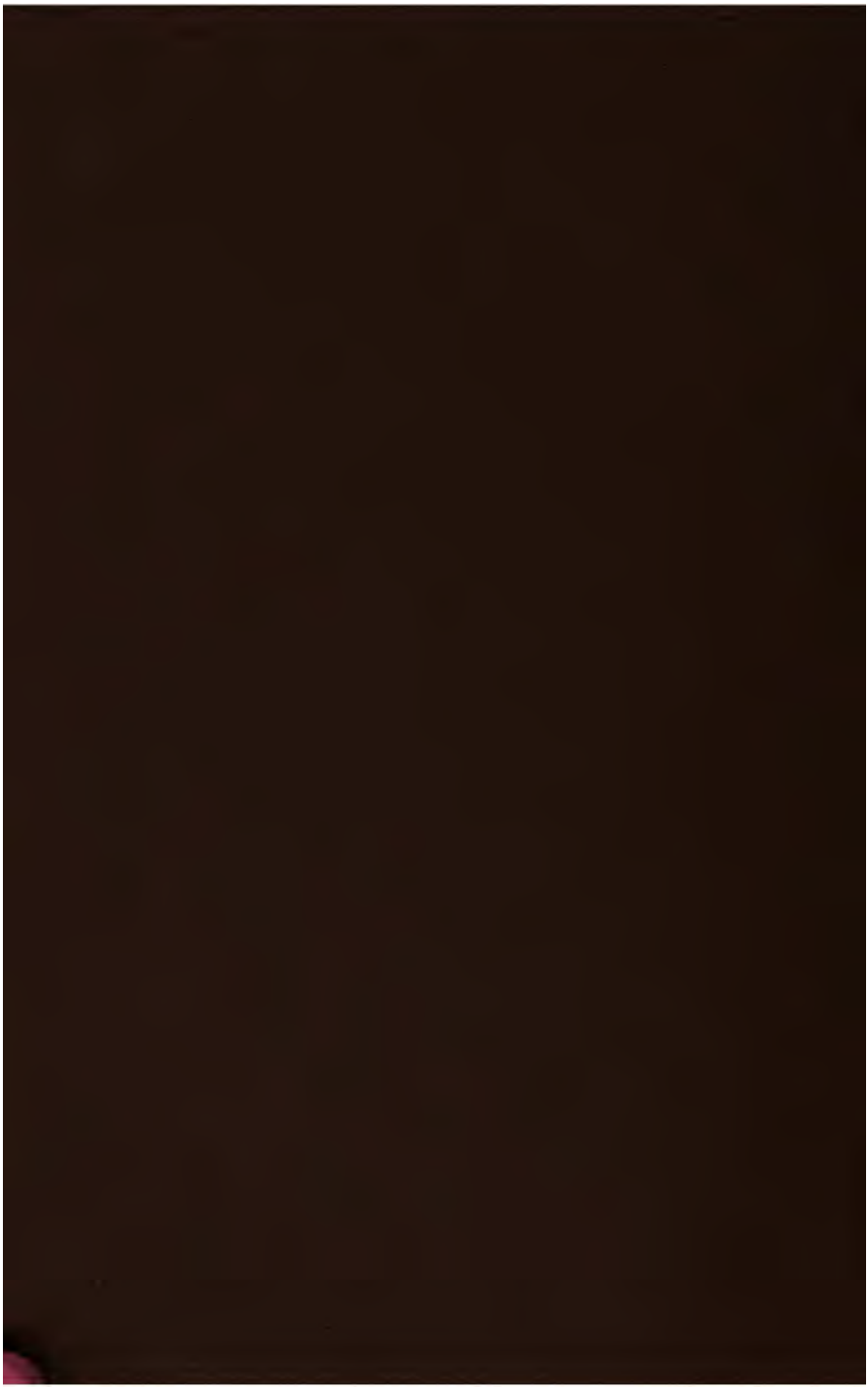

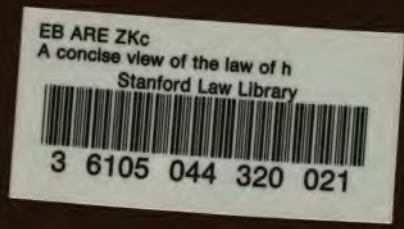
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